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NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
SL CITY REDEVELOPMENT AGENCY
451 S STATE ROOM 418
SLC UT 84111
BY: RDJ, DEPUTY - WI 15 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

HOTEL PEDESTRIAN EASEMENT

THIS GRANT OF PEDESTRIAN EASEMENT (this "Agreement") is made this 23rd day of December, 1999, by GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("Developer"), 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 "Hotel Parcel") and shown on the Site Plan attached as Exhibit "B" (the "Site Plan"). The Hotel Parcel 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.

B. Pursuant to the terms of a Participation and Reimbursement Agreement between Agency and Developer (the "Reimbursement Agreement"), Developer has agreed to construct certain Developer Improvements (as such term is defined in the Reimbursement Agreement), including a hotel development on a the Hotel Parcel.

C. In partial consideration for Agency's agreement to reimburse Developer for certain of its costs associated with the Developer Improvements, Developer has agreed to provide for a public walkway (the "Hotel Walkway") and to record against the Hotel Parcel an easement over, across and through the Hotel Parcel, and for pedestrian ingress and egress as provided herein, for the benefit of all of the Hotel Parcel and the general public. The real property constituting the

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Hotel Walkway is sometimes referred to herein as the Pedestrian Easement or the Hotel Walkway.

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. HOTEL WALKWAY EASEMENT

1.1 *Conveyance of Easement.* Developer hereby reserves and grants the Pedestrian Easement, which shall have a width of not less than thirty (30) feet and a height of not less than twenty (20) feet, or such lesser width or height approved by the Planning Commission ("Commission") of Salt Lake City Corporation ("City") or approved by the Commission's designee, for the benefit of all of the Hotel Parcel and the general public in accordance with the Rules of Conduct (defined later) for pedestrian access between the Union Pacific Plaza (which is depicted on the Site Plan) and 500 West Street, and passage over, across and through the Hotel Walkway to be constructed between Union Pacific Plaza and 500 West Street within the envelope depicted on the Site Plan as "Hotel Walkway Envelope". The Pedestrian Easement granted herein shall be perpetual. Developer may construct or reconstruct the improvements contemplated by Section 1.2 within the Hotel Walkway Envelope. The Hotel Owners reserve the right to adopt, enforce and post reasonable rules of conduct (the "Rules of Conduct") governing the use and maintenance of the Pedestrian 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 the Depot Common Area 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 Pedestrian Easement.* The Pedestrian Easement shall be designed and constructed (and reconstructed, if applicable) in accordance with the Reimbursement Agreement which provides that prior to commencing construction of any portion of Developer Improvements (which include the Hotel Walkway), Developer shall obtain the approval of the

Commission 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, the Developer shall submit the design of the Hotel Walkway for review by City's Crime Prevention Task Force (the "CPTF Review"). Following the CPTF Review, the Developer 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 his/her sole discretion, require the Developer to implement and adopt any or all of the findings and recommendations from the CPTF Review. The Parties acknowledge that the design may include provision for landscaping, kiosks, and non-permanent furniture located on or adjacent to the Hotel Walkway so long as a walkway for pedestrian access is maintained. Construction of the Hotel Walkway shall commence when the Hotel Parcel is first improved or redeveloped and shall be completed by the date City issues Certificates of Occupancy for the proposed hotel to be located on the Hotel Parcel.

1.3 *Hours of Operation.* If the Pedestrian Easement is located in or through the hotel or other building on the Hotel Parcel, the Pedestrian Easement shall be open and accessible during the normal business hours of such building. If the Pedestrian Easement is located outside, the Pedestrian Easement shall be open to the general public for pedestrian access, 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 (hereafter "Walkway Hours").

1.4 *Limited Construction.* Neither Developer nor its successors and assigns shall construct any wall, impediment, or other structure on any portion of the Pedestrian Easement unless permitted by the approved design 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 the owners and occupants of the Hotel Parcel and to the general public for access over, across and through the Pedestrian Easement, except as consistent with the Walkway Hours.

2. MAINTENANCE

Developer and its successors and assigns in and to the Hotel Parcel (the "Hotel Owners"), shall at their sole cost and expense repair, replace, restore and maintain the Pedestrian Easement in an attractive, first-class, high quality condition; keep the Pedestrian Easement clean and free of rubbish, debris, filth, refuse, snow, ice, standing water, graffiti and hazards to persons using the Pedestrian Easement; inspect the Pedestrian 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 Pedestrian Easement. City and Agency shall have no obligation whatsoever to repair, replace, restore or maintain the Pedestrian Easement. City and Agency shall have no obligation whatsoever to repair, replace, restore or maintain the Pedestrian Easement.

3. DEFAULT

Should the Hotel Owners 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 Hotel Owner's obligations on behalf of the Hotel Owners and the Hotel Owners shall reimburse Agency or City, as the case may be, for the cost incurred by City or Agency in performing Hotel 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 the Hotel Owners do not reimburse Agency or City within such ten (10) days, Agency or City shall have the right to exercise any and all rights which such curing party 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 under 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 Developer: Gateway Associates, Ltd.
The Boyer Company, L.C.
127 South 500 East
Salt Lake City, Utah 84102
Attention: H. Roger Boyer

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11:31AM

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 Developer or the Hotel Owners (as the case may be), 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, the Hotel Owners 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 Pedestrian Easement located on such indemnifying owner's real property and including, without limitation, any Claims or Actions relating to the use or non-use of the Pedestrian Easement or Depot Common Area for activities 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 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. Agency shall have the right to offset

any reimbursements payable to Developer under the Reimbursement Agreement by any amounts expended by Agency or City as a result of the Hotel Owners' failure to indemnify Agency or City under this Agreement. The Hotel Owners' obligation 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, City, their successors and assigns.

8. DAMAGE OR DESTRUCTION

If the Pedestrian Easement or any portion thereof is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Hotel Owners shall proceed with due diligence to reconstruct the Pedestrian Easement and restore all improvements to substantially its condition 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.* None of the owners of the real property upon which the Pedestrian Easement is located shall use the Pedestrian Easement, or permit anything to be done on or about the Pedestrian 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 Pedestrian 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 Hotel Parcel 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 Hotel Parcel.

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 the Hotel Owners, and City

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and Agency. Any such written amendment shall become valid when recorded with the Salt Lake County Recorder's Office against the Hotel Parcel.

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 Hotel Parcel 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 Hotel Owners, as provided herein, 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.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Hotel Parcel 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. The Hotel Owners shall be permitted to close the Hotel Walkway 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 Hotel Walkway 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, or the beneficiary under a deed of trust or the secured party under any security agreement recorded with respect to the Hotel Parcel 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 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 Developer 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 Developer, no notice delivered to Developer 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 Developer 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.

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

(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 in this Agreement, 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 and 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. Neither Agency nor City shall be obligated to make any other statement or agreement for the benefit of the Qualified Mortgagee.

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

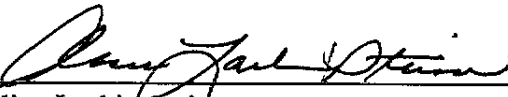
By 

Its: Manager

**REDEVELOPMENT AGENCY OF SALT LAKE
CITY**

By 

Deedee Corradini
Its Chief Administrative Officer

By 

Alice Larkin Steiner
Its Executive Director

Approved as to form by
Legal Counsel:

Jones, Waldo, Holbrook & McDonough:



RECORDED

SALT LAKE CITY CORPORATION

JAN 05 2000

CITY RECORDER

By *Deedee Corradini*
Deedee Corradini
Mayor

Attest and Countersign:

Cristina A. Neek
Chief Deputy City Recorder



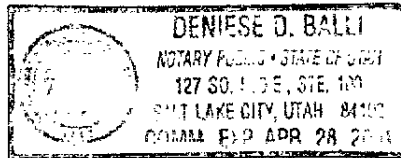
Approved as to form by *Chris Balist*

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

On the 23 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.

Denise D. Balli
NOTARY PUBLIC
Residing at: *Salt Lake County*

My Commission Expires:
4-28-01



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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.

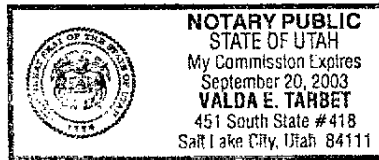
Valda E. Tarbet

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.

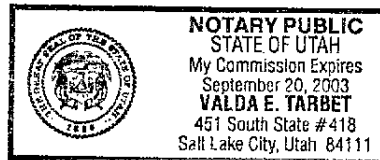
Valda E. Tarbet

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

9/20/03



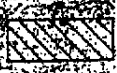
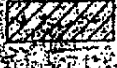
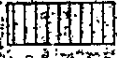
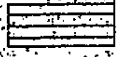

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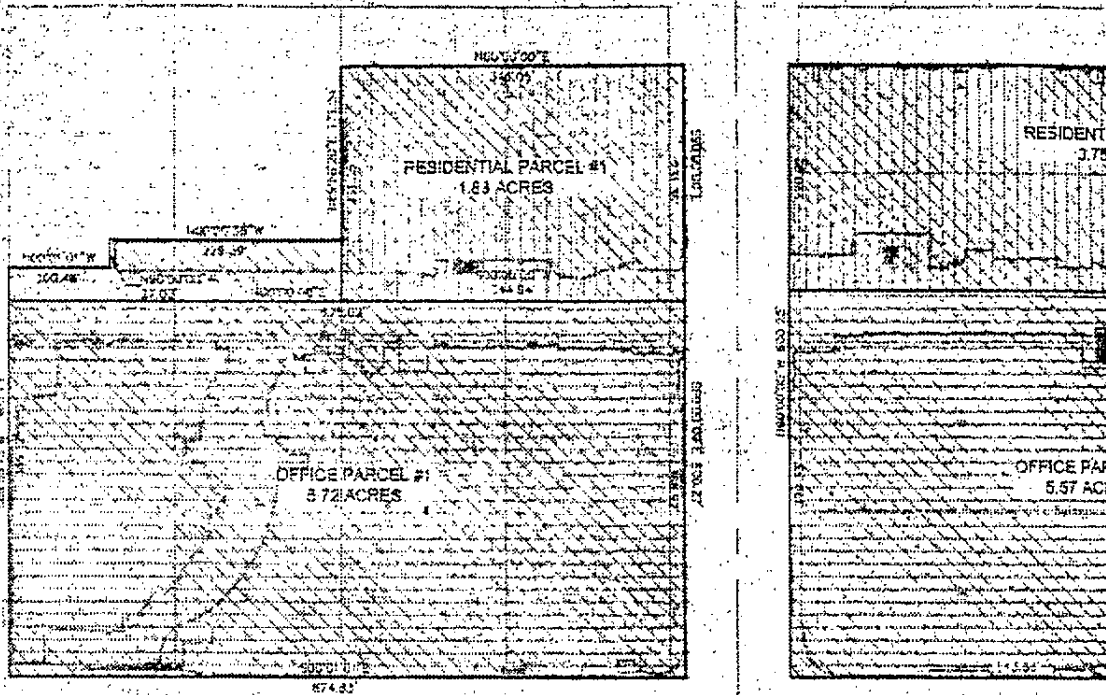
Exhibit A

Legal Description of Hotel Parcel

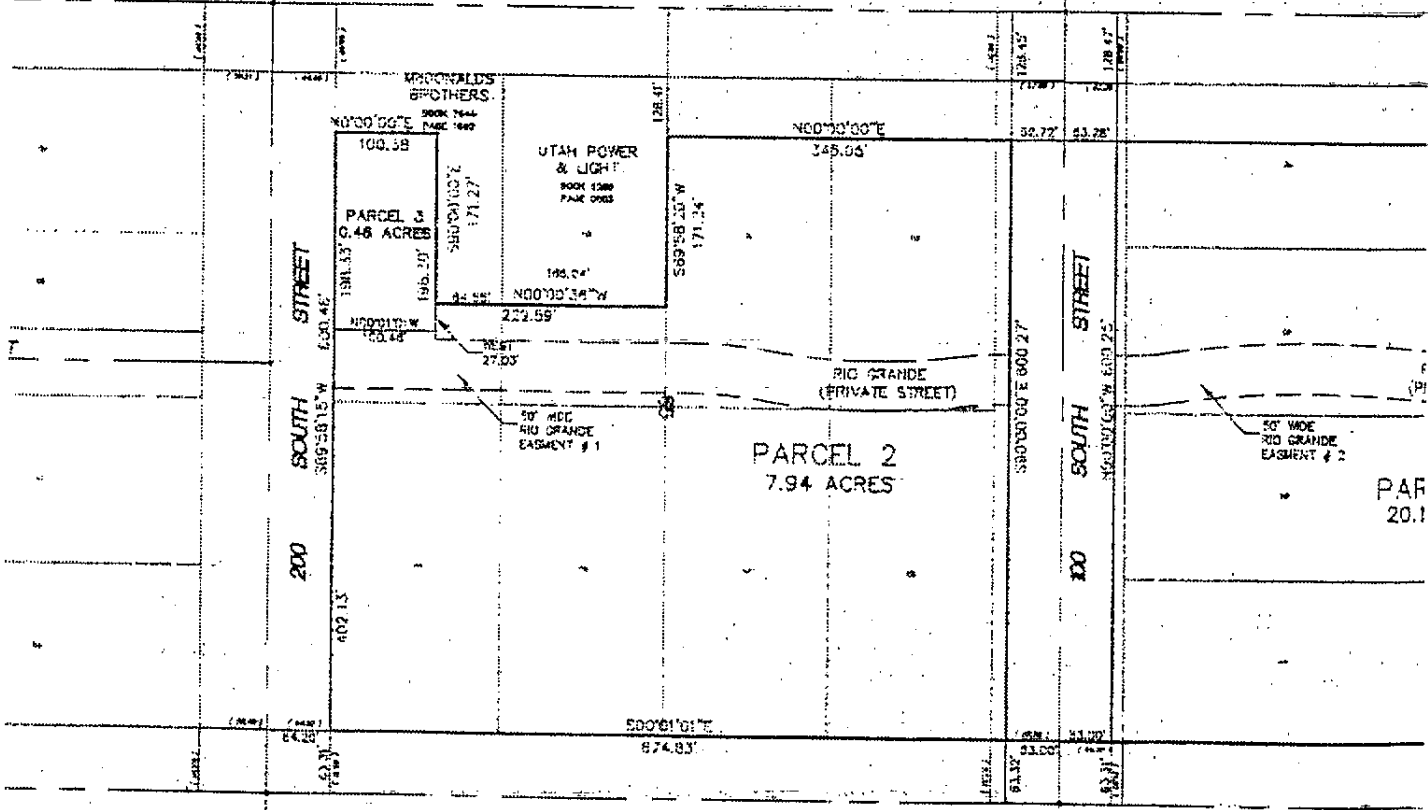
HOTEL PARCEL

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.)

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



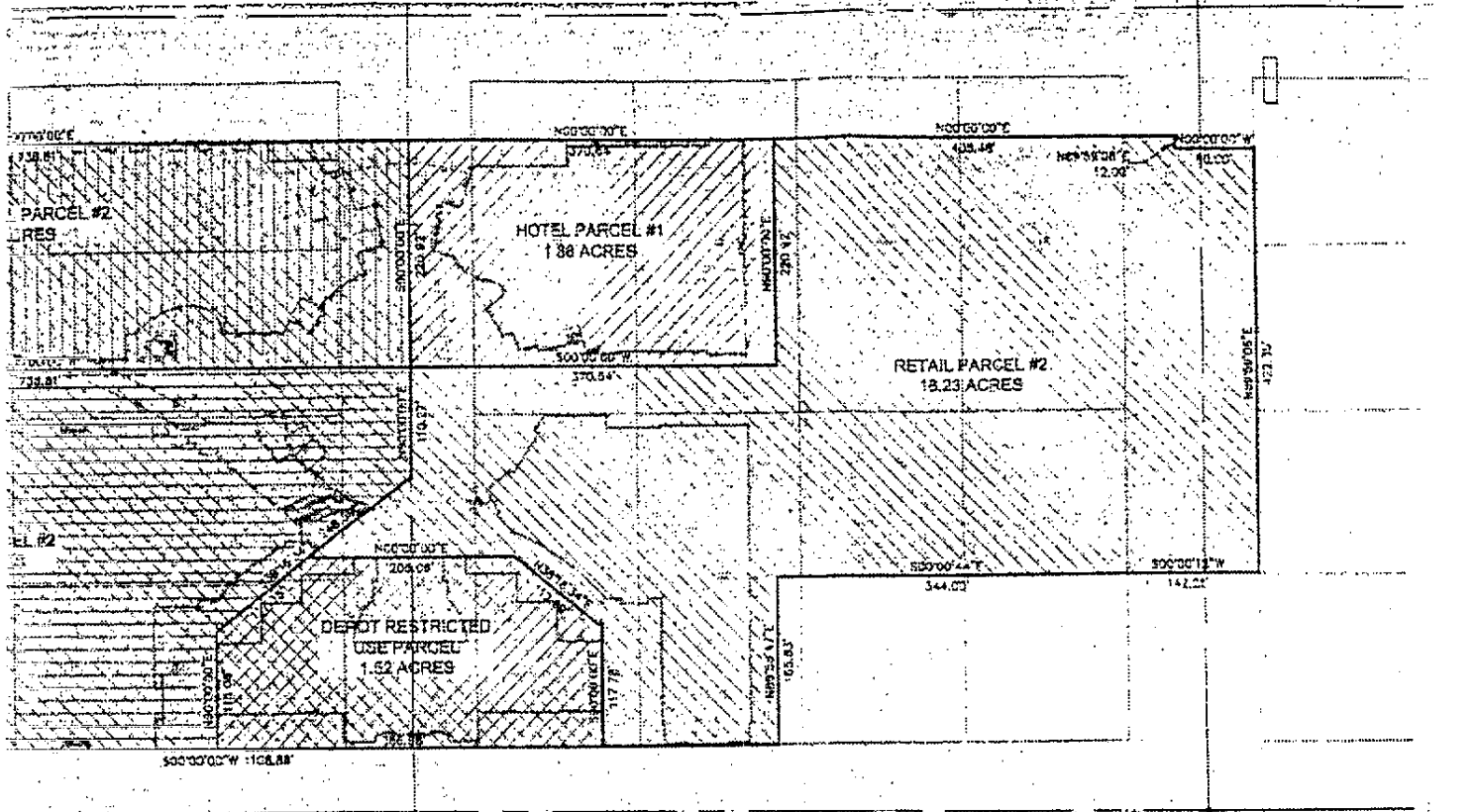
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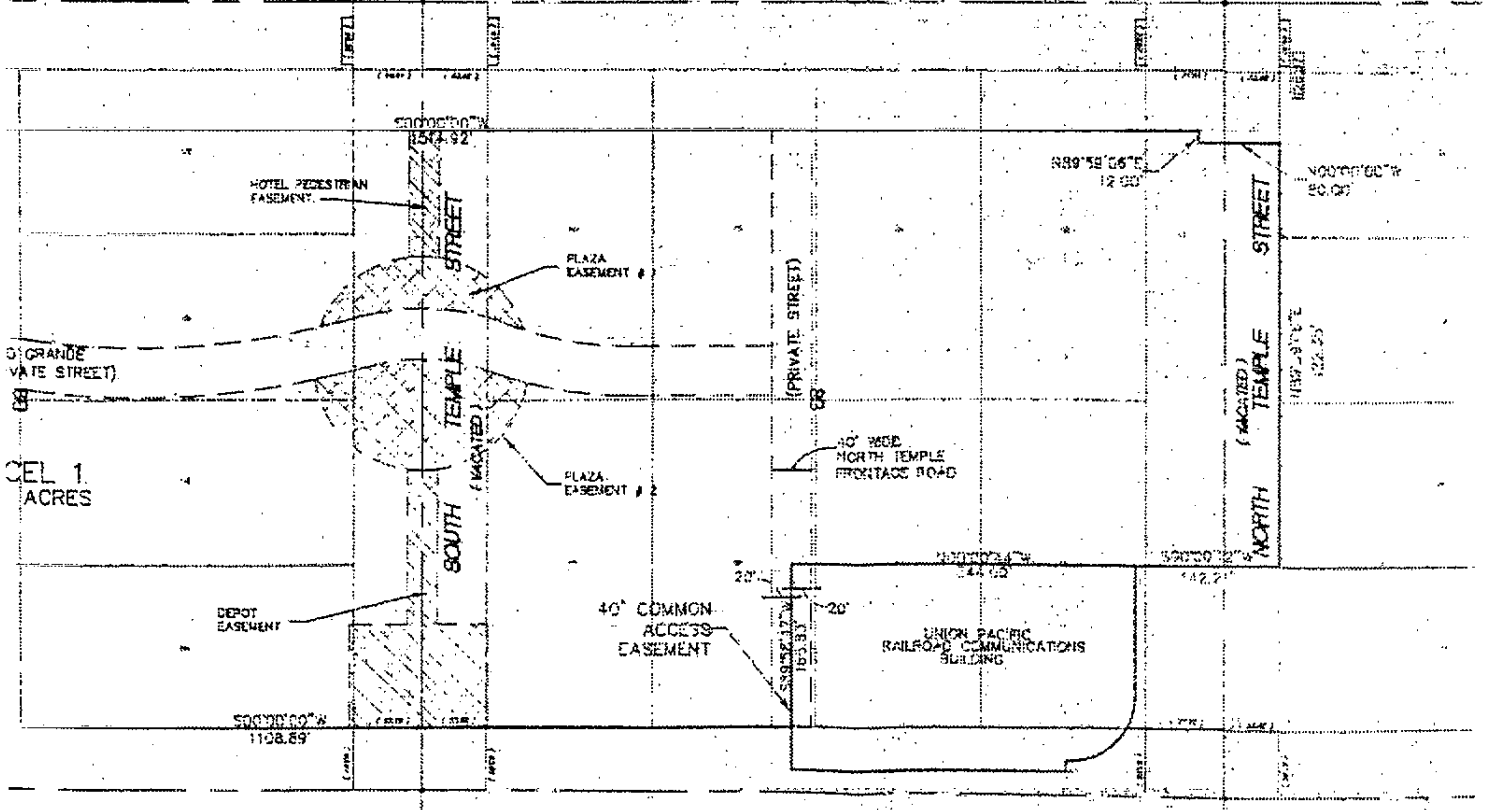
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IT "B"

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CO. RECORDER



STREET 500 WEST STREET 500



STREET 400 WEST STREET

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