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When Recorded, Please Return To:
Robert A. McConnell
PARR WADDOUPS BROWN GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

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07/20/2004 04:37 PM 29.00
Book - 9016 Pg - 2645-2654
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: EHB, DEPUTY - MI 10 P.

CENTRAL PLANT PARTICIPATION AGREEMENT

DATE: June 30, 2004

GATEWAY: GATEWAY RETAIL HOLDINGS, L.C.,
a Utah limited liability company("Gateway")

Address: 90 South 400 West, Suite 200
Salt Lake City, Utah 84101

USER: GATEWAY OFFICE 1, L.C.

Address: 90 South 400 West, Suite 200
Salt Lake City, Utah 84101

PROPERTY: A condominium unit located in Salt Lake County, Utah, known as Office Unit 1 contained within the Gateway Block B Condominium Project, as more particularly described on Schedule "B" (the "User's Property").

RECITALS:

A. Gateway owns and operates a central plant (the "Plant") which generates both hot and cold water having the specifications set forth on Schedule "A" attached to this Agreement ("Temperature Controlled Water"). The Temperature Controlled Water system is a closed system used only for heating and cooling purposes and the Temperature Controlled Water may not be used for consumption.

B. Gateway Office 1 ("User") owns Office Unit 1 contained within the Gateway Block B Condominium Project ("User's Property").

C. Gateway owns the real property on which the Plant is located ("Central Plant Property") described in Schedule "C" attached to this Agreement.

ORIGINAL

LTC 39207

D. User desires to obtain from Gateway a supply of Temperature Controlled Water to heat and cool the building improvements located on User's Property and to heat culinary water used by the occupants and guests of such building improvements.

AGREEMENT:

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

1. **Requirements Contract.** Gateway shall sell and deliver to User (at the Points of Delivery specified in Section 2 of this Agreement) and User shall purchase and receive from Gateway, all Temperature Controlled Water which User requires for heating and cooling the building improvements to be constructed on User's Property and to heat culinary water used by the occupants and guests of such building improvements.

2. **Specifications and Delivery Points.** Gateway shall deliver Temperature Controlled Water to the Points of Delivery having the specifications set forth on Schedule "A". For purposes of this Agreement, Points of Delivery shall mean that point at which Gateway's 4 Pipe System enters the User's Property on Level P-5 west of the building entrance. User shall, at its sole cost and expense, make such connections as are necessary to the systems of Gateway at the Points of Delivery for distribution through the User's Property pursuant to Paragraph 3.

3. **User Treatment of Temperature Controlled Water-Required Systems.** User shall, at its sole cost and expense, select, install, operate, maintain, repair and replace on an ongoing basis when necessary all terminal heating and cooling equipment, pumps and related equipment required by User for the delivery of Temperature Controlled Water throughout the User's Property. User shall take such steps as are necessary to ensure that each and all of the foregoing systems and equipment (and all related and ancillary equipment) as are installed by User are compatible with the Plant and its distribution systems and that such User installed equipment is maintained and kept in a fully operational status such that does not damage or harm the Plant or its distribution systems.

4. **Distribution.** Gateway shall make all necessary arrangements and contract for any necessary distribution of Temperature Controlled Water from the Plant to the Points of Delivery.

5. **Rates.** From and after completion of User's Property (i.e. substantial completion of the shell), User shall pay to Gateway a fee calculated in accordance with an annual base rate of \$1.25 per square foot for each square foot of occupied space located within User's Property and an annual base rate of \$.25 per square foot for each square foot of un-occupied space located within User's Property, each of the foregoing as an initial annual base rate (the "Base Rate[s]") for occupied and un-occupied space for delivery of Temperature Controlled Water to the Points of Delivery. For purposes of this Agreement, space shall be deemed occupied if the interior of such space has been improved with tenant or owner improvements and finishes and is being

actually occupied on an ongoing basis, in each case, as reasonably determined by Gateway. The applicable fee for delivery of Temperature Controlled Water (the "Delivery Fee") shall be determined by multiplying the appropriate square footage of the User's Property (i.e. occupied and un-occupied space) by the applicable Base Rate for such space. Not less than ten (10) days prior to the end of each calendar quarter, User covenants to provide a written statement to Gateway identifying any actual or imminent change in occupancy within the User's Property such that Gateway can properly determine and assess the appropriate Delivery Fee due with respect to the User's Property for the upcoming calendar quarter. The Delivery Fee shall be adjusted on a quarterly basis so as to reflect changes in occupancy of the User's Property in accordance with the foregoing Base Rates, subject to modification as more particularly set forth herein. The Base Rates shall also be subject to increase annually on January 1st of each year (the "Adjustment Date") in an amount equal to the percentage increase in the Index, as hereinafter defined, calculated as follows:

The Base Rates will be adjusted by multiplying the then current Base Rates by a fraction, the numerator of which is the Adjustment Index, as hereinafter defined, and the denominator of which is the Beginning Index, as hereinafter defined. The calculation shall be made within forty-five (45) days after the Index data becomes available for the relevant period and a corrected invoice shall be issued promptly for all invoices delivered prior to the Adjustment Date and the date the calculation is made. If the corrected invoice indicates that additional amounts are due Gateway from User, User shall pay such additional amounts within ten (10) business days after receipt of any such corrected invoice.

For purposes of such calculations, the "Index" shall be the Consumer Price Index (All Cities Urban for All Items) (the "CPI"), the 2001 annual year end CPI shall be the Beginning Index, and the "Adjustment Index" means the annual CPI for the twelve (12) months immediately preceding applicable Adjustment Date. In no event shall the Base Rates be decreased as a result of a change in the Index, and the delay or failure of Gateway to compute or to bill User for any adjustment to be made pursuant to this Paragraph 4 shall not impair the continuing obligation of User to pay the increased Base Rates resulting from such adjustment.. For purposes of this Agreement, the Users Property shall be deemed to consist of 161,233, none of which is presently occupied. In no event shall the Base Rates be reduced or eliminated by virtue of the User's failure to effectively put to use the Temperature Controlled Water delivered to the Points of Delivery.

6. Payment of Bills. The Delivery Fee, as determined in accordance with the foregoing, shall be due and payable in advance on a quarterly basis. Commencing on the first day of the first calendar quarter after completion of User's Property (i.e. substantial completion of the shell) and at the first of each calendar quarter thereafter, Gateway shall cause an invoice to be prepared and delivered to User and each such invoice shall be due and payable in full by User within ten (10) business days after receipt. To the extent that User's Property is completed other than at the end of a calendar quarter, Gateway's first invoice to User shall include a pro-rated Delivery Fee for delivery of Temperature Controlled Water for the portion of such calendar quarter following completion of User's Property, calculated in accordance with the foregoing.

7. **Right of Access.** Duly authorized representatives of either party to this Agreement shall be permitted to enter the premises of the other party to this Agreement at all reasonable times in order to carry out the provisions of this Agreement.

8. **Continuity of Service.** Gateway shall make all commercially reasonable efforts to provide a constant and uninterrupted supply of Temperature Controlled Water pursuant to this Agreement. Gateway shall not be liable to any person (including User or any person claiming by, through or under User) for any losses or damages attributable to the failure, interruption or variation in the supply or specifications of Temperature Controlled Water resulting from or through any cause beyond Gateway's control including, without limitation: strikes, riots, or other emergencies; acts of God or a public enemy; delays or moratoriums caused or imposed by any governmental authorities; accidents; labor troubles; equipment failure not attributable to the negligent maintenance by Gateway; shortages, or interruption in the transportation or transmission, of natural resources or other materials or services for any reason including, without limitation, priority or similar regulations or orders of any governmental or regulatory body; or failure of a governmental agency to issue an approval or permit despite diligent pursuit thereof. In addition, Gateway shall not be liable for any losses or damages attributable to short periods of interrupted service required by periodic maintenance; provided, Gateway endeavors to give prior notice thereof to User.

9. **Assignment.** Except as specifically provided below, no assignment by Gateway or User of this Agreement or any rights hereunder, other than an assignment for security purposes in connection with borrowings by Gateway or User, and except for transfers pursuant to enforcement of security interests or in lieu thereof, shall be valid without the written consent of the other party. Notwithstanding the foregoing, if an assignee of this Agreement assumes the obligations of its assignor arising from and after the date of the assignment in writing, and no uncured default then exists on the part of such assignor under this Agreement, then; (a) User shall not withhold its consent to any assignment of Gateway's interest in this Agreement made in connection with a sale of the condominium unit within which the Plant is located; and (b) Gateway shall not withhold its consent to an assignment, in whole or in part, as the case may be, of User's interest in this Agreement to a purchaser of the entirety of User's Property, or a purchaser of a "Sub-Unit" created within the User's Property pursuant to the provisions of the Declaration of Condominium for the Gateway Block B Condominium Project (as said term is defined in such Declaration). Upon any partial assignment of this Agreement by User: (y) Gateway and User's assignee shall execute a separate agreement in form and content substantively identical to this Agreement except that such agreement shall be limited in scope to the applicable Sub-Unit acquired by such assignee; and (z) Gateway and User shall amend this Agreement to reflect the reduction in the square footage of the User's Property, or as applicable, any Sub-Unit then owned by User.

10. **Entire Agreement.** This Agreement, together with the Schedules hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended without the written agreement of both parties, and, if applicable, any Mortgagee holding a first position lien of record (i.e. a lien created by a

mortgage or deed of trust that is not subordinate to any other monetary lien or encumbrance, except liens for taxes or other liens which are given priority by statute) on either the User's Property or the Central Plant Property. For purposes hereof, "Mortgagee" shall mean any person or entity (and any successor to the interest of any such person or entity) named as a mortgagee or beneficiary in any mortgage, deed of trust or other document pledging the Central Plant Property or the User's Property, as the case may be, or an interest therein as security for payment of a debt or obligation.

11. Notice and Cure.

A. User shall be in default if it fails to pay any amount due under this Agreement within thirty (30) days after notice.

B. Either User or Gateway shall be in default with respect to a non-monetary obligation if it shall fail to cure such default within thirty (30) days after receipt of written notice of such default; provided, if the defaulting party promptly commences and diligently pursues a cure, such thirty (30) day period shall be extended by such additional time period as is reasonably required to effect a cure; provided User shall not be in non-monetary default if Gateway fails to furnish Temperature Controlled Water.

C. In the event the defaulting party fails to cure the default, the other party may exercise all rights available at law or equity, except as specifically limited hereby.

D. In the event of a default by Gateway, User may seek specific performance.

12. Term. This Agreement shall become effective as of the date of this Agreement and shall remain effective through an initial term ending on December 31, 2099. Upon expiration of the initial term, and provided that Gateway continues to provide Temperature Controlled Water, the User shall have the first right to acquire from Gateway the amount of Temperature Controlled Water needed for the continued operation of the User's Property at the then prevailing market rate that such Temperature Controlled Water is being provided to other users of the Temperature Controlled Water. This Agreement shall remain effective after the initial term unless and until it is terminated by either party by giving to the other party advance written notice of not less than six (6) months of its intention to terminate. This Agreement may not be terminated by Gateway by reason of a User default; provided, however, that Gateway may bring an action for specific performance or damages and may terminate the supply of Temperature Controlled Water until such User default is cured. Notwithstanding the foregoing, any Mortgagee that acquires User's Property and User's interest in this Agreement by foreclosure, trustee's sale or a deed in lieu thereof, and any transferee of such Mortgagee, shall be required to perform only such obligations under this Agreement arising from and after the date of the said Mortgagee's acquisition of User's Property.

13. Covenants Run With Land. This Agreement shall inure to the benefit of and be binding upon Gateway and User and their respective successors and assigns, and the benefits and

burdens created by this Agreement shall run with the land with respect to the Central Plant Property and User's Property.

14, **Estoppel Certificates.** Within 10 days after request, each party shall furnish to the other party, for use by such party and/or potential buyers, lenders, and tenants, a statement describing any alleged breaches of this Agreement, or if none, so stating, and such other matters relating to this Agreement as may reasonably be requested.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

"GATEWAY"

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


GATEWAY RETAIL MANAGER, INC., a Utah corporation

By: 
Steven B. Ostler, President

"USER"

GATEWAY OFFICE 1, L.C., a Utah limited liability company, by its Manager

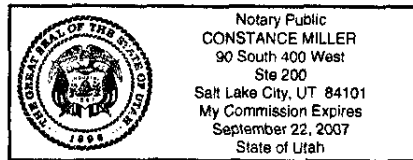
GATEWAY OFFICE MANAGER, INC., a Utah corporation

By: 
Steven B. Ostler, President
Vice

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

The foregoing instrument was acknowledged before me this 29th day of June, 2004, by Steven B. Ostler, the President of GATEWAY RETAIL MANAGER, INC., a Utah corporation, which is the Manager of GATEWAY RETAIL HOLDINGS, L.C., a Utah limited liability company.

Constance Miller
NOTARY PUBLIC

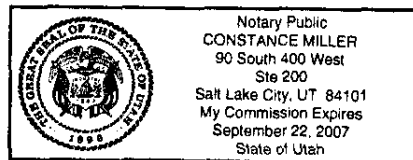


STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 29th day of June, 2004, by Steven B. Ostler, President of GATEWAY OFFICE MANAGER, INC., a Utah corporation, which is the Manager of GATEWAY OFFICE 1, L.C., a Utah limited liability company.

Vice

Constance Miller
NOTARY PUBLIC



SCHEDULE "A"

Specifications of Temperature Controlled Water

Heating water will be generated at approximately 230°F at the Plant. Temperature Controlled Water will be distributed to the Points of Delivery at approximately 180°F. Chilled water will be generated at approximately 45°F at the Plant for distribution to the Points of Delivery at approximately the same temperature. The heating and chilled water systems will contain a 10% propylene glycol solution to provide freeze protection throughout the system.

SCHEDULE "B"

Description of User's Property

Office Unit 1, contained within the Gateway Block B Condominium Project as the same is identified in the Record of Survey Map recorded in Salt Lake County, Utah, on February 26, 2001, as Entry No. 7828970 (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "Block B Map") and in the Declaration of Condominium for Gateway Block B Condominium Project, recorded in Salt Lake County, Utah on February 26, 2001, as Entry No. 7828971, in Book No. 8427 at Page 4752-4829 (as said Gateway Block B Declaration may have heretofore been amended or supplemented, the "Block B Declaration")), TOGETHER WITH the undivided ownership interest in said Gateway Block B Condominium's Common Elements that is appurtenant to said Unit as more particularly described in the Block B Declaration.

[FOR REFERENCE PURPOSES ONLY: Tax Serial (Sidwell) No. 15-01-131-005]

SCHEDULE "C"

Description of Central Plant Property

CP Unit 1, contained within the Gateway Block B Condominium Project as the same is identified in the Record of Survey Map recorded in Salt Lake County, Utah, on February 26, 2001, as Entry No. 7828970 (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "Block B Map") and in the Declaration of Condominium for Gateway Block B Condominium Project, recorded in Salt Lake County, Utah on February 26, 2001, as Entry No. 7828971, in Book No. 8427 at Page 4752-4829 (as said Declaration may have heretofore been amended or supplemented) (the "Block B Declaration:"), TOGETHER WITH the undivided ownership interest in said Project's Common Elements that is appurtenant to said Unit as more particularly described in said Block B Declaration.

[FOR REFERENCE PURPOSES ONLY: Tax Serial (Sidwell No. 15-01-131-008)]