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LANDMARK TITLE

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RECORDER, SALT LAKE DOUNTY, UTAH

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Book - 9128 Pg ~ 497-505

BY: SBM, DEPUTY - WI 9 P.

#### WHEN RECORDED, PLEASE RETURN TO:

REDEVELOPMENT AGENCY OF SALT LAKE CITY Room 418, City & County Building 451 South State Street Salt Lake City, Utah 84111

Attn: Executive Director

## RECORDED

MAY 0 3 2005

## CITY RECORDER

FIRST AMENDMENT TO DEPOT PEDESTRIAN AND PUBLIC USE EASEMENT

THIS FIRST AMENDMENT TO DEPOT PEDESTRIAN AND PUBLIC USE EASEMENT (this "Amendment") is made this 3 day of April, 2005, by the undersigned fee owner of the Restricted Property ("Owner"), Redevelopment Agency of Salt Lake City, a public agency organized and existing under the Redevelopment Agencies Act ("Agency"), and Salt Lake City Corporation, a municipal corporation of the State of Utah (the "City"). Capitalized terms not otherwise defined herein shall have the same meaning given to such terms in the Easement Agreement (defined below).

#### **RECITALS:**

- A. Gateway Associates, Ltd., a Utah limited partnership ("Gateway Associates"), Agency and City entered into that certain Depot Pedestrian and Public Use Easement dated December 23, 1999, and recorded in the office of the Salt Lake County Recorder on January 5, 2000 as Entry No. 7553966 in Book 8336, Pgs. 1284-1301 (the "Easement Agreement").
- The Owner is the successor in interest of Gateway Associates to the real property which is the subject of the Easement Agreement.
- C. Exhibit A to the Easement Agreement contemplates that upon further subdivision or the creation of certain condominiums on the Restricted Property, the legal descriptions of the Restricted Property would be revised and updated to reflect such further subdivision and/or the creation of such condominium units. Such further subdivided lots and condominium units have been created by mesne documents of record.
  - D. The undersigned desire to amend the Easement Agreement as provided herein.

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#### AGREEMENT:

FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned agree as follows:

#### 1. Amendment to Recitals.

- (a) Recital A is amended by deleting the words "and shown on the Site Plan attached as Exhibit "B" (the "Site Plan")".
- (b) Recital B is amended by deleting the words "as depicted on the Site Plan."
- (c) Recital C is amended by inserting, following the words "by reference," the following: "as shown on that certain ALTA/ACSM Land Title Survey dated April 29, 2005, prepared by McNeil Engineering and Land Surveying and identified as Project No. 250155, a copy of which has been filed with the Salt Lake County Surveyor's Office (the "Survey")
- 2. <u>Amendment to Exhibits</u>. Exhibit A to the Easement Agreement, which sets forth the legal description of the Restricted Property, is hereby amended and replaced in its entirety with <u>Exhibit A-1</u>, attached hereto and incorporated herein by this reference. All references to "Exhibit A" in the Easement Agreement are hereby deleted and replaced in their entirety with "Exhibit A-1". Exhibit "B" is hereby deleted.
- 3. <u>Amendment to Owner's Notice Address</u>. The notice address for Owners set forth in Section 6 of the Easement Agreement is hereby amended and replaced as follows:

If to Owner:

Gateway Retail Holdings, L.C. c/o The Boyer Company, L.C. 90 South 400 West, Suite 200 Salt Lake City, Utah 84101

- 4. <u>No Consents Necessary</u>. Each of the Owner, Agency and City hereby represents and warrants that it does not need to obtain the consent of any other party in order to execute this First Amendment, except in the case of the Owner, the consent of Wells Fargo Bank, National Association, which is provided below.
- 5. <u>Miscellaneous</u>. Except as expressly modified by the provisions of this First Amendment, the Easement shall continue in full force and effect. In the event any inconsistencies exist between the terms of this First Amendment and the Easement, this First Amendment shall control. The deletion of an entire Section of the Easement Agreement pursuant to this Amendment shall not result in any renumbering of the remaining Sections of the Easement Agreement. The individuals who execute this First Amendment represent and warrant that they are duly authorized to execute this First Amendment on behalf of the Owner, Agency and City, as the case may be, and that the parties named are all of the parties and proper parties,

and that no other signature, act or authorization is necessary to bind such entities to the provisions of this First Amendment. This First Amendment may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument. Executed originals (or counterpart originals) of this First Amendment may be delivered by facsimile transmission, which facsimile transmission copies shall be deemed originals.

(signature pages follow)

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IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the day and year first above written.

#### **OWNERS**:

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

GATEWAY RETAIL MANAGER, INC, a Utah corporation

By: Steven B. Ostler
Title: manager President

#### AGENCY:

REDEVELOPMENT AGENCY OF SALT LAKE CITY

Ross C Andersor

Its: Chief Administrative Officer

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Its: Executive Director

Approved as to legal form:

Jones, Waldo, Holbrook & McDonough, P.C.

CITY:

SALT LAKE CITY CORPORATION

Ross C. Anderson, Mayor

RECORDED

Attest and Countersign:

MAY 0 3 2005

\_ CITY RECORDER

Chief Deputy City Recorder

Approved as to form by

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STATE OF UTAH )
) SS: COUNTY OF SALT LAKE )
The foregoing instrument was acknowledged before me this day of April, 2005, by Start, b. OSHLV, the President of Gateway Retail Holdings, L.C.
NOTARY PUBLIC Rachael N. Niusutu 90 South 400 West. Ste 200 Salt Lake City. Utah 84101 My Comm Exp. Aug 20. 2007 STATE OF UTAH  Notary Public
STATE OF UTAH ) ) SS:
COUNTY OF SALT LAKE )
The foregoing instrument was acknowledged before me this 21 day of April, 2005, by Ross C. Anderson, the Chief Administrative Officer of the Redevelopment Agency of Salt Lake City, a public agency.
Hotary Public Molary Public
STATE OF LITAH  Notary Public  CHRISTINE K. CORDWELL
) SS:  COUNTY OF SALT LAKE )  451 S. State Street, Room 306 Salt Lake City. UT 84111 My Commission Expires February 15, 2009 State of Utah State of Utah
The foregoing instrument was acknowledged before me this 25 day of April, 2005, by David J. Oka, Executive Director of the Redevelopment Agency of Salt Lake City, a public
agency.  Walter Reserve
Notary Public NOTARY PUBLIC STATE OF UTAH
STATE OF UTAH ) My Commission Expires Mum 24, 2009 CARCHYW L. BERGER
COUNTY OF SALT LAKE )  451 S. Stelle Street, Suite 418 Salt Lake Gry, Ulen 84111
The foregoing instrument was acknowledged before me this <u>27</u> day of April, 2005, by Ross C. Anderson, the Mayor of Salt Lake City Corporation.
Notary Public CHRISTINE K. CORDWELL 451 S. State Street, Room 366 Salt Lake City, UT 44111 My Commission Expires February 15, 2008  Notary Public  Notary Public

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# CONSENT AND ACKNOWLEDGMENT OF WELLS FARGO BANK, NATIONAL ASSOCIATION

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Wells Fargo"), does hereby acknowledge and consent to the foregoing First Amendment to Depot Pedestrian and Public Use Easement. Wells Fargo does hereby subordinate the lien of (a) that certain Deed of Trust, dated February 14, 2001 the ("Deed of Trust"), executed by Licensor (as defined therein), as Trustor, in favor of Landmark Title Company, as Trustee, in favor of Wells Fargo, as Beneficiary, and recorded in the office of the Salt Lake County Recorder on March 7, 2001 as Entry No.7838029 in Book 8431 at Page 8788; and (b) that certain UCC Financing Statement (the "Financing Statement"), recorded on March 7, 2001 as Entry No. 7838030 in Book 8431 at Page 8811, to the rights of Licensee (as defined in the Deed of Trust) and its successors and assigns under this Agreement. Such subordination is solely intended to ensure that after any foreclosure of the Deed of Trust or pursuant to the Financing Statement, City and Agency, and their successors and assigns, shall have the right to use the easements granted pursuant to the Easement Agreement amended by this Amendment. Such subordination shall not be construed as a release of the collateral secured by the Deed of Trust or Financing Statement or a subordination of the Deed of Trust or Financing Statement as to any other recorded interest in the Restricted Property.

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By: <u>🛚 🞾</u>	W	/		
Name: 1	Duralus T	heckett	دد	
Title:	Lestelan L	VILE	Priviles	A-

STATE OF LITALY ) ss.

On this 5 day of May, 2005, before me personally appeared locality, who acknowledged himself to be the flist of the flist of which the foregoing instrument for the purposes therein contained, by signing the name of the company, by himself as such officer.

NOTARY PUBLIC



#### Exhibit A-1

### Revised Legal Description of the Restricted Property

LOT 3, Boyer Gateway Subdivision Plat, recorded in the office of the Salt Lake County Recorder on February 23, 2001, as Entry No. 7828967, in Book 2001P at Page 37 of Plats.

Tax Parcel No.: 08-36-376-016-0000

Exhibit B

Deleted

Exhibit B-1 - Page 1