

RECORDED

MAY 0 3 2005

CITY RECORDER



9370283 05/06/2005 04:27 PM \$31.00 Book - 9128 Ps - 525-535 GARY W. OTT RECORDER, SALT LAKE COUNTY, UTAH LANDMARK TITLE BY: SBM, DEPUTY - WI 11 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: Executive Director

FIRST AMENDMENT TO HOTEL PEDESTRIAN EASEMENT NOW KNOWN AS WALKWAY EASEMENT

THIS FIRST AMENDMENT TO HOTEL PEDESTRIAN EASEMENT NOW KNOWN AS WALKWAY EASEMENT (this "Amendment") is made this day of April, 2005, by GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("Developer"), 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. Developer, Agency and City entered into that certain Hotel Easement dated December 23, 1999, and recorded in the office of the Salt Lake County Recorder on January 5, 2000 as Entry No. 7553965 in Book 8336, Pgs. 1263-1283 (the "Easement Agreement").
- B. Pursuant to separate approvals of the City and Agency, the approved use of the Hotel Parcel has been modified such that the Parcel identified on Exhibit D to the Easement Agreement as the "Hotel Parcel" (identified on Exhibit A-1 to this Amendment as "LOT 6") is no longer intended for use for hotel purposes and now constitutes an additional "Retail Parcel."
 - C. 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. <u>Amendments</u>.

- (a) The name of the Agreement, "Hotel Pedestrian Easement," is changed to "Walkway Easement."
- (b) In Recital A, the phrase "as shown on the Site Plan attached hereto as Exhibit "B" ("Site Plan")" is deleted.
- (c) In Recital B, the phrase ", including a hotel development on the Hotel Parcel" is deleted.
 - (d) In Recital C, the last sentence is deleted.
- (e) In Section 1.1, the first sentence is deleted and replaced with the following:
 - "Conveyance of Easement." Developer hereby reserves and grants an easement (the "Walkway Easement") over, across and through that portion of the Developer Parcel more particularly described in Exhibit C-1 attached hereto as shown on Exhibit B-1 (the "Walkway Easement Area") for pedestrian access between the Union Pacific Plaza (which is depicted on the Site Plan) and 500 West Street for the benefit of all of the Developer Parcel and the general public in accordance with the Rules of Conduct (defined later). A pedestrian bridge may be constructed above the Walkway Easement Area, so long as there is a minimum of fourteen (14) feet clearance from the surface of the Walkway Easement Area to the underside of such bridge at all points."
 - (f) In Section 1.1, the third sentence is deleted.
- (g) In the last sentence of Section 1.2, the word "hotel" is deleted and replaced with the word "development".
- (h) In Section 1.3, the first sentence is deleted, and in the second sentence, the phrase "If the Pedestrian Easement is located outside" is deleted.
- (i) Each reference to "Hotel Parcel" in the Easement Agreement shall be changed to "Developer Parcel."
- (j) Each reference to "Hotel Walkway" and "Pedestrian Easement' in the Easement Agreement shall be changed to "Walkway Easement Area" or "Walkway Easement" as appropriate in the context.

- (k) Each reference to "Hotel Owners" in the Easement Agreement shall be changed to "Owners."
- (l) Exhibit "A" to the Easement Agreement, which sets forth the legal descriptions of the Hotel Parcel, and Exhibit B to the Easement Agreement, which is a Site Plan, are hereby amended and replaced in their entirety with Exhibit A-1, which is a legal description of the Developer Parcel, and Exhibit B-1, which is a depiction of the Walkway Easement Area, respectively, attached hereto and incorporated herein by this reference. All references to "Exhibit A" or "Exhibit B" in the Easement Agreement are hereby deleted and replaced in their entirety with "Exhibit A-1" and "Exhibit B-1," respectively. Exhibit C-1, which is a legal description of the Walkway Easement Area, attached hereto and incorporated herein by this reference, is hereby added to the Easement Agreement.
- 2. <u>No Consents Necessary</u>. Each of the Developer, 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 Developer, the consent of Wells Fargo Bank, National Association, which is provided below.
- 3. <u>Miscellaneous</u>. Except as expressly modified by the provisions of this First Amendment, the Easement Agreement shall continue in full force and effect. In the event any inconsistencies exist between the terms of this First Amendment and the Easement Agreement, 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 each of the Developer, 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.

(Signatures begin on following page)

IN WITNESS WHEREOF, the Parties have executed this Amendment 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

REDEVELOPMENT AGENCY OF SALT LAKE

CITY

By: Ross C. Anderson

Chief Administrative Officer Its:

Approved as to legal form:

JONES, WALDO, HOLBROOK & MCDONOUGH, P.C.:

SALT LAKE CITY CORPORATION

Anderson, Mayor

RECORDED

MAY 0 3 2005

Attest and Countersign: CITY REC

all 4/21/05

Chief Deputy City Recorder

CITY RECORDER

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Approved as to form by

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STATE OF UTAH)
COUNTY OF SALT LAKE) Steven B. Ostler
On the Aday of April , 2005, 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.
NOTARY PUBLIC Rachael N. Niusulu 90 South 400 West. Sie. 200 Sait Lake City. Usah 84:01 My Comm Exp Aug. 20. 2007 STATE OF UTAH Residing at: Calf Luic City.
My Commission Expires: 8.30.07
STATE OF UTAH)
: ss. COUNTY OF SALT LAKE)
The foregoing instrument was acknowledged before me this 37 day of Redevelopment Agency of Salt Lake City, a public agency. **Market Lake City** **Marke
My Commission Expires: Notary Public CHRISTINE K. CORDWELL 451 S. State Street. Room 306 Salt Lake City, UT 84111 My Commission Expires February 15, 2009 State of Utah

STATE OF UTAH)
: ss. COUNTY OF SALT LAKE)
The foregoing instrument was acknowledged before me this 25th day of
My Commission Expires: 3/24/07 NOTARY PUBLIC STATE OF UTAH My Commission Expires March 24, 2009 CAROLYN I. BERGER 451 S. State Street, Suith 418 Saft Lake City, Utah 84111
STATE OF UTAH)
COUNTY OF SALT LAKE)
On the 37 day of his plane, 2005, personally appeared before me Ross C. Anderson, who being by me duly sworn did say he 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. **NOTARY PUBLIC Residing at:**
My Commission Expires: Notary Public CHRISTINE K. CORDWELL 451 S. State Street. Room 306 Sah Lake City. UT B4111 My Commission Expires February 15. 2009 State of Utah

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 Hotel Pedestrian Easement Now Known as Walkway 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 Retail Parcels and Office Parcels.

	ASSOCIATION, a national banking
	association
	By: Olas Cut
	Name: Dowlas Checketts
	Title: Ass: start vice Predident
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STATE OF <u>lital!</u>)	
COUNTY OF SAUT LAIE) ss.	
On this 56 day of May, 2005, before me packnowledged himself to be the Assistant Victoria	personally appeared Douglas Checkers, who
Association, and being authorized to do so, he exemples	uted the foregoing instrument for the
purposes therein contained, by signing the name of	
purposes unerem commission, of bigining and many	

WELLS FARGO BANK, NATIONAL

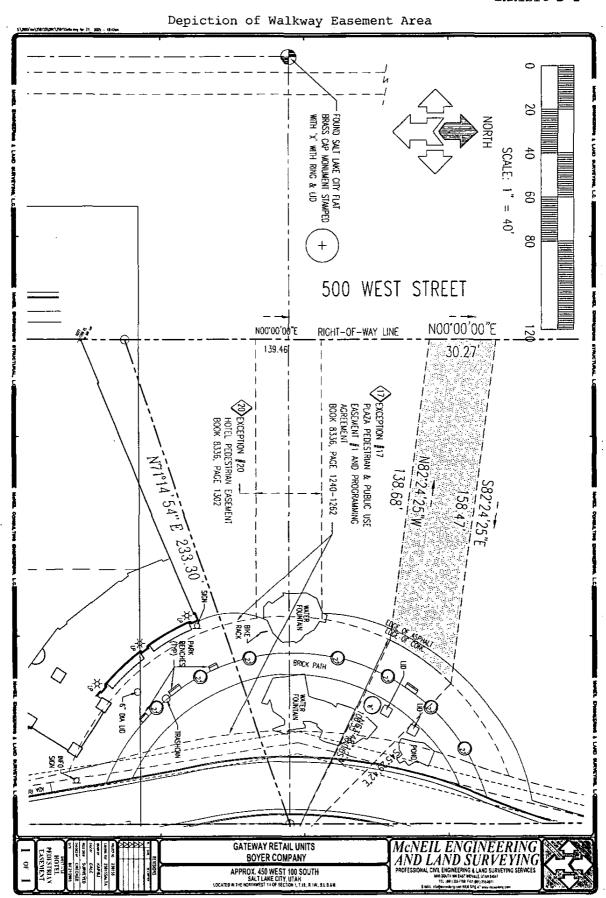


Legal Description of Developer Parcel

DEVELOPER PARCEL

LOT 6, 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.: 08-36-376-013-0000



Legal Description of Walkway Easement Area

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY LINE OF 500 WEST STREET, SAID POINT BEING SOUTH 275.14 FEET FROM THE NORTHWEST CORNER OF LOT 6, BOYER GATEWAY SUBDIVISION AND RUNNING THENCE SOUTH 82°24'25" EAST 158.47 FEET TO A POINT ON A NON-TANGENT CURVE; THENCE ALONG A 106.55 FOOT RADIUS CURVE TO THE LEFT (RADIUS BEARS SOUTH 45°29'42" EAST) THROUGH A CENTRAL ANGLE OF 18°18'30" AN ARC DISTANCE OF 34.05 FEET; THENCE NORTH 82°24'25" WEST 138.68 FEET TO THE EASTERLY BOUNDARY LINE OF 500 WEST STREET; THENCE NORTH ALONG THE EASTERLY BOUNDARY LINE OF SAID 500 WEST STREET 30.27 FEET TO THE POINT OF BEGINNING.

CONTAINS: 4,427 SQUARE FEET