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**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**  
**(The Gateway—Retail Parcels)**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (the "**Declaration**") is made this 5<sup>th</sup> day of May, 2005, by GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("**Associates**") and GATEWAY RETAIL HOLDINGS, L.C., a Utah limited liability company ("**Holdings**"). [Associates and Holdings are sometimes referred to in this Declaration collectively as "**Declarants**".]

**RECITALS:**

A. Declarants own certain tracts of real property located in Salt Lake County, State of Utah which are described on Exhibit "A" and Exhibit "B". The Parcels (as defined below) are part of The Gateway, which is a mixed-use retail.

B. Declarants desire to establish with respect to the Parcels, reciprocal rights of ingress and egress for pedestrians and vehicles, reciprocal parking rights, reciprocal easements for utilities, and certain covenants and restrictions, all on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarants make the following declarations, create the following easements and establish the following covenants, conditions and restrictions, all of which apply to, bind, affect and run with title to each Parcel.

1. **Definitions.** Certain capitalized terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined terms, the following capitalized terms shall have the meanings indicated:

**"50 North Street"** means the private road which runs from 400 West Street to 500 West Street which is defined in that certain North Temple Frontage Road Grant of Easement dated December 23, 1999, which was recorded January 13, 2000 as Entry No. 7553965, in Book 8336, at Page 1263, as corrected in an Affidavit recorded August 7, 2000 as Entry No. 7693049, in Book 8379, at Page 5484, all of the Official Records of Salt Lake County, Utah.

**"Access Areas"** means the areas on the Parcels used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of

vehicles and pedestrians, but does not include any land covered by a Building or any exterior service areas that are intended for the exclusive use of the occupants of a particular Building, such as loading docks and trash areas, but not including the Circulation Roads.

"**Adjustment CPI**" means the annual CPI for the twelve (12) months immediately preceding applicable Adjustment Date.

"**Adjustment Date**" means January 1st of each year commencing January 1, 2008.

"**Arbitration**" is defined in Section 10(c).

"**Beginning CPI**" means the CPI on January 1, 2007.

"**Benefitted Parties**" means, with respect to a Parcel, the Owners and Occupants of that Parcel, and their respective employees, customers, guests and invitees.

"**Building**" means a building or other principal structure on a Parcel including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches and similar items.

"**Circulation Roads**" means Rio Grande Street and 50 North Street.

"**CPI**" means the Consumer Price Index (All Cities, Urban for All Items).

"**Curb Cuts**" means vehicular access lanes between the Circulation Roads and each Parcel and between the Parcels.

"**Exclusive Use**" means, with respect to a tenant of any Parcel, a right granted in such tenant's lease that allows it to be the sole retailer at The Gateway which is allowed to conduct a specified retail activity within The Gateway.

"**Governmental Authorities**" means all governmental or quasi-governmental units, commissions, councils, boards, agencies, staffs or similar bodies having jurisdiction over a Parcel or its use, operation, maintenance or development.

"**Government Requirements**" means all laws, ordinances, statutes, regulations or other similar laws promulgated by Governmental Authorities.

"**Improvements**" means all improvements other than Buildings and related improvements located from time to time on a Parcel substantially as contemplated by the Site Plan including, without limitation, any Access Areas, Parking Areas, landscaping, driveways, walkways, exterior lighting, striping, curbs, retaining walls, screening walls and signs.

"**Indemnitee**" is defined in Section 13.

**“Indemnitor”** is defined in Section 13.

**“Issue Price”** is defined in Section 9(b).

**“Lateral Utility Improvements”** means lateral utility lines extending from utility trunk lines located in the Circulation Roads to the Lots.

**“Mediation”** is defined in Section 10(b).

**“Mortgage”** means a recorded mortgage, deed of trust or other security agreement creating a lien on a Parcel or a portion of a Parcel as security for the payment of indebtedness.

**“Mortgagee”** means a Person which is the mortgagee, beneficiary or other secured party under a Mortgage.

**“Occupant”** means any Person that, pursuant to a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Parcel or any portion of a Parcel.

**“Olympic Legacy Plaza”** means the area so labeled on the Site Plan which is described in that certain Plaza Pedestrian and Public Use and Programming Easement dated December 23, 1999, which was recorded July 13, 2000 as Entry No. 7553964, in Book 8336, at Page 1240, as corrected by an Affidavit recorded August 7, 2000 as Entry No. 7693049, in Book 8379, at Page 5484, all of the Official Records of Salt Lake County, Utah.

**“Owner”** means the Person that, at a specified time, is the owner of record in the office of the County Recorder of Salt Lake County, Utah of a fee or an undivided fee interest in a Parcel or portion of a Parcel. In the event that, at any time, there is more than one Owner of a Parcel, the liability of each such Owner for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory or law relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by a Mortgage pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof. A ground lessee or other long term tenant shall not be deemed to be an Owner for purposes of this Declaration.

**“Parcel”** means any one of the Parcels.

**“Parcels”** means the Retail Phase 1 Parcels and the Retail Phase 2 Parcels.

**“Parking Areas”** means the areas on each Parcel that are used at any time and from time to time for parking which shall, in all events, contain such number of parking stalls as may be required by Governmental Authorities to provide for parking of the Buildings located on the Parcel.

**"Parking Rules"** is defined in Section 9(d).

**"Parking Validations"** means validations issued to and used by customers, guests and invitees of the Benefitted Parties of the Parcels to pay for parking in the Parking Areas.

**"Person"** means a natural person, legal entity or trust.

**"Permitted Uses"** means with respect to all of the Parcels, all commercial, retail, restaurant, and office use permitted by law.

**"Phase 2 Contribution"** means the amount payable by the Owners of Retail Phase 2 to the Owners of Retail Phase 1 pursuant to Section 7(b), which shall equal the sum of fifty cents (\$.50) per rentable square foot for each square foot of retail space of Retail Phase 2 for which a shell certificate of occupancy has been issued regardless of whether such space has been or is leased or occupied. The Phase 2 Contribution shall be subject to increase on a calendar year basis on the Adjustment Date in an amount equal to the lesser of: (a) three percent (3%); or (b) the percentage increase in the CPI, as hereinafter defined. The percentage increase in the CPI shall be calculated as follows:

The Phase 2 Contribution will be adjusted by multiplying the then current Phase 2 Contribution by a fraction, the numerator of which is the Adjustment CPI, and the denominator of which is the Beginning CPI. The calculation shall be made within forty-five (45) days after the CPI data becomes available for the relevant period and the new Phase 2 Contribution shall be applicable from and after the first day of the calendar month following such recalculation.

**"Retail Phase 1 Parcels"** means the tracts of land owned by Holdings described and labeled as such on Exhibit "A".

**"Retail Phase 2 Parcels"** means the tracts of land owned by Associates described and labeled as such on Exhibit "B"

**"Rio Grande Street"** means that street which runs north and south between 200 South Street and 50 North Street, which is described in that certain Rio Grande Street Grant of Easement dated January 3, 2000, which was recorded January 13, 2000 as Entry No. 7553963, in Book 8336, at Page 1217, as corrected by an Affidavit recorded August 7, 2000 as Entry No. 7693049, in Book 8379, at Page 5484, all of the Official Records of Salt Lake County, Utah

**"Rules and Regulations"** is defined in Section 5.

**"Site Plan"** means the plan attached to this Declaration as Exhibit "C".

2. Grant of Easements.

a. Reciprocal Easements. Declarants hereby create the following easements with respect to each Parcel for the benefit of the Benefitted Parties of the other Parcels, which easements shall be appurtenant to each of the Parcels but which may only be used to such extent as may be reasonably related to the use of the Parcels for the Permitted Uses:

(i) Pedestrian Easements. Non-exclusive easements across the sidewalks or walkways on each Parcel for pedestrian use by the Benefitted Parties of the other Parcels.

(ii) Vehicle Easements. Non-exclusive easements across the Circulation Roads on each Parcel and across the other traffic lanes and driveways within the Access Areas on each Parcel for the purpose of furnishing access and the right of access for the vehicles of the Benefitted Parties of the other Parcels.

(iii) Parking. Subject to the provisions of Section 9, non-exclusive right to use the Parking Areas on each Parcel by the Benefitted Parties of the other Parcels; provided the Owner of Lots 5 and 7 may withdraw from the reciprocal parking easements created by this Section 2(a) by written notice to the Owner of Retail Phase 1 and recording a copy of such withdrawal. Any withdrawal shall be perpetual.

(iv) Utility Easements. Subject to the provisions of Section 4(b), non-exclusive right to construct, maintain, repair, relocate and operate utility lines and pipes in the Circulation Roads.

3. Construction of Buildings and Related Improvements.

a. Construction of Buildings on Parcels. Each Owner, at its own cost and expense, may construct the Buildings contemplated to be located on its Parcel; provided no Buildings may be constructed on the Circulation Roads or the Olympic Legacy Plaza. Once commenced, construction of any Buildings and related improvements shall be diligently pursued to completion. Construction of all Buildings shall be performed in a good and workmanlike manner.

b. Destruction of Buildings. If any Building on a Parcel is at any time destroyed or condemned and the Owner of the Parcel does not diligently proceed to rebuild the same, such Owner shall either promptly reconstruct the damaged Building or raze the remaining portion of such Building. Any unimproved land or land rendered unimproved as a result of the razing of a destroyed or condemned Building shall be maintained in a weed-free condition and shall be paved or covered with gravel or asphalt, or landscaped to avoid dust.

4. Construction of Common Improvements.

a. Circulation Roads. The Circulation Roads are completed. Notwithstanding the foregoing, the Owner of the Parcels on which 50 North Street is located may relocate 50 North

Street and in such event shall extend or shorten Rio Grande Street to meet the relocated 50 North Street. Prior to modifying 50 North Street and modifying Rio Grande Street, the Owner of Retail Phase 2 shall deliver to the Owner of Retail Phase 1 a site plan and conceptual plans and specifications for such relocations and extensions. The Owner of Retail Phase 1 shall have the right to approve such site plan and conceptual plans and specifications, which approval shall not be unreasonably withheld. The plans for the modification of Rio Grande Street shall provide for lighting systems and design similar to the existing Rio Grande Street. If the Owner of Retail Phase 1 does not object to the site plan and conceptual plans within twenty (20) business days, it shall be deemed to have approved the same. If the Owner Retail Phase 1 objects, it shall specify in writing the basis for the objection and the changes which, if made, would cause approval to be granted. Any dispute shall be resolved pursuant to Section 10.

b. Additional Utilities. Any Owner may construct additional required utilities or relocate existing utilities at its own cost and expense in the Circulation Roads at a location and in accordance with plans and specifications approved by Governmental Authorities. The Owner installing such utilities shall promptly restore any damage to the Circulation Roads caused by such installation.

c. Interruptions. Construction of a relocated 50 North Street, any resulting modification of Rio Grande Street or additional utilities shall not adversely impact the easements and rights of the Benefitted Parties of the Retail Phase 1 Parcel pursuant to Section 2 except for temporary closures (which shall not occur during customary business hours) or other interruptions (which shall not unnecessarily interrupt the flow of pedestrian traffic to the Parcels during normal weekday business hours).

d. Notice to Adjoining Owners. The Owner proposing to make any alteration, relocation or change pursuant to this Section 4 shall provide to the Owner of the adjoining Parcels written notice of, and conceptual plans for, the proposed alteration, relocation or other change not less than thirty (30) days before any work commences.

e. Compliance with Governmental Requirements. Any proposed alteration, relocation or other change pursuant to this Section 4 shall comply with all Governmental Requirements.

f. Restrictions. Any proposed alteration, relocation or other change shall not reduce the number of parking stalls located on a Parcel.

g. Payment of Costs. The Owner proposing to make any alteration, relocation or other change shall pay the entire cost of such alteration, relocation or change.

5. Rules and Regulations. The Owners of Retail Phase 1 and Retail Phase 2 shall promulgate reasonable rules regarding the use of the Circulation Roads, the Access Areas and Parking Areas (the "**Rules and Regulations**"). If, at any time, there are different Owners of Retail Phase 1 and/or Retail Phase 2, the deed or conveyance separating ownership shall specify which Owner continues to have the right to establish Rules and Regulations pursuant to this Section, it

being the intent of Declarants that only one Person be entitled to represent Retail Phase 1 and only one Person be entitled to represent Retail Phase 2 in making the Rules and Regulations. If any Owner objects to the rules it shall state the basis for the objection in writing to each other Owner. If the Owners cannot resolve the objection, the Owner may submit the matter to alternative dispute resolution pursuant to Section 10.

6. Maintenance of Circulation Roads. The Owner of Retail Phase 1 shall maintain all of Rio Grande Street and the Olympic Legacy Plaza at its sole cost and expense except to the extent of the contribution of the Owner of Retail Phase 2 pursuant to Section 7(b). The Owner of Retail Phase 2 shall maintain 50 North Street at its sole cost and expense.

7. Maintenance of Access Areas and Parking Areas.

a. Maintenance of Access Areas and Parking Areas. Except as set forth in Section 6 regarding the Circulation Roads, the Olympic Legacy Plaza and 50 North Street, each Owner shall continuously maintain and keep in good order, condition and repair all Access Areas and Parking Areas located on its Parcel. Without limiting the foregoing:

(i) Except for the Phase 2 Contribution made by the Owner of Retail Phase 2 to the Owner of Retail Phase 1 for maintenance of the Olympic Legacy Plaza and Rio Grande Street pursuant to Section 7(b) and the provisions for payment of parking costs pursuant to Section 9, each Owner shall pay the cost of maintaining, repairing and replacing the Access Areas and Parking Areas on its Parcel.

(ii) Each Owner shall replace any Improvements to the Access Areas and Parking Areas on its Parcel if the same are destroyed or damaged. Each Owner shall pay electricity bills for the outdoor lighting, security and janitorial for the Improvements on its own Parcel.

(iii) If an Owner fails to maintain the Circulation Road, Access Areas and Parking Areas on its Parcel, the manager or the Owner of an adjoining Parcel may, after thirty (30) days written notice setting forth in reasonable detail the particular failure, enter the Parcel and perform the required maintenance at the cost and expense of the defaulting Owner. The Owner performing the maintenance shall invoice the defaulting Owner. If the defaulting Owner fails to pay the invoice within fifteen (15) days, then: (i) a five percent (5%) late payment fee shall be added to the invoice on the sixteenth (16<sup>th</sup>) day; (ii) the unpaid balance shall thereafter accrue interest at the rate of eighteen percent (18%) per annum; and (iii) all sums owing shall be secured by a lien against the Parcel owned by the defaulting Owner.

b. Contribution to Plaza Operating Expenses. On a regular basis established by the Owner of Retail Phase 1, but not more frequently than monthly, the Owners of Retail Phase 2 Parcels shall pay to the Owner of Retail Phase 1 the Phase 2 Contribution to compensate the Owner of Retail Phase 1 for all costs related to the Plaza and Rio Grande Street including, without limitation, maintenance, operation and repair of the Plaza (including the fountain) and surrounding landscaping, snow removal on the Olympic Legacy Plaza and Rio Grande Street, and all holiday and seasonal decorations.

8. Certain Reciprocal Rights and Covenants.

a. Further Subdivision of Parcels. Any Owner may further subdivide its Parcel or create a condominium project with respect to any of its Parcel without the prior written consent of each other Owner. Upon any such subdivision, each subdivided lot shall be a separate "Parcel" for all purposes under this Declaration.

b. Exclusive Uses. All Exclusive Uses set forth in leases to tenants for any of the Parcels as of the date of recordation of this Declaration shall continue to be binding upon the Parcels in accordance with the terms of such leases. From and after the date of recordation of this Declaration, the Owner of the Retail Phase 1 Parcel or the Retail Phase 2 Parcel may grant additional Exclusive Use rights to its tenants only with respect to the Parcels owned by such Owner unless it obtains the prior written consent of the Owner of the other Parcels, which approval may be withheld at such Owner's sole discretion.

9. Parking Provisions.

a. Cash Revenue. Each Owner shall be entitled to any and all revenue received on account of the Parking Areas on its Parcels.

b. Parking Validations. The Owner of Retail Phase 1 shall issue all Parking Validations and shall establish the price of the Parking Validations (the "**Issue Price**"), which shall be commercially reasonable and shall not materially exceed the price of Parking Validations for similar parking facilities in mixed-use projects in downtown Salt Lake City. All Owners shall be entitled to purchase Parking Validations at the lowest rate such validations currently are available for sale to any Owner or to any tenant of Retail Phase 1 except for such rates that are specifically stated in a tenant's lease with the Owner of Retail Phase 1.

c. Exchange of Parking Validations. The Owner of Retail Phase 1 will honor Parking Validations issued to the Owner of Retail Phase 2. The Owner of Retail Phase 2 will honor Parking Validations issued to the Owner of Retail Phase 1. At least once each calendar month, the Owner of Retail Phase 1 shall pay the Owner of Retail Phase 2 the Issue Price for each Parking Validation that is used in the Parking Areas on Retail Phase 2.

d. Parking Rules; Dispute Resolution. The Owners of Retail Phase 1 and Retail Phase 2 shall mutually promulgate reasonable rules regarding the use of the Circulation Roads, the Access Areas and Parking Areas (the "**Parking Rules**"). If, at any time, there are different Owners of Retail Phase 1 and/or Retail Phase 2, the deed or conveyance separating ownership shall specify which Owner continues to have the right to establish the Parking Rules pursuant to this Section, it being the intent of Declarants that only one Person be entitled to represent Retail Phase 1 and only one Person be entitled to represent Retail Phase 2 in promulgating the Parking Rules. If any Owner objects to the proposed Parking Rules or to the price of Parking Validations, it shall state the basis for the objection in writing to each other Owner. If the Owners cannot resolve the objection, the Owner may submit the matter to alternative dispute resolution pursuant to Section 10.



10. Dispute Resolution.

a. Good Faith Attempt to Resolve Disputes. In the event of a dispute arising under this Declaration, the parties to the dispute shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Declaration by negotiation between designated representatives with authority to resolve the dispute.

b. Mediation. Prior to exercising any other remedies available or required under this Declaration or otherwise available at law or equity, including, without limitation, Arbitration pursuant to Section 10(c), the parties to the dispute shall first attempt in good faith to settle any dispute arising out of or relating to this Declaration or its breach by mediation pursuant to this Section ("Mediation"). Any party to the dispute may demand Mediation by written notice to the other parties to the dispute. The Mediation is to be administered by a mediator mutually agreed upon by the parties to the dispute, in the absence of an agreement, any party to the dispute may petition the Chief Judge of The Third Judicial District Court in and for Salt Lake County, Utah to appoint a mediator. If the Mediation does not resolve the dispute, any party to the dispute may then resort to Arbitration.

c. Arbitration. In the event of a dispute and after the parties to the dispute have satisfied the requirements of Section 10(a) and (b), then any party to the dispute by delivering written notice delivered to the other parties to the dispute may elect to subject the dispute to binding arbitration by a single arbitrator in an expedited proceeding pursuant to this Section 10(c) (an "Arbitration"). The Arbitration shall be governed by and subject to the terms of this Section and to the Utah Arbitration Act, Utah Code Annotated 78-31a-1. The parties to the dispute shall promptly designate a single arbitrator. If the parties to the dispute cannot agree upon an arbitrator within thirty (30) days after the initial written notice demanding Arbitration, any party to the dispute may by motion made to a Utah State Court having jurisdiction pursuant to Utah Code Annotated, Section 78-31a-5, request that the court appoint an arbitrator. If and to the extent that the issue giving rise to the dispute involves a specialized expertise, such as, but not limited to, resolution of an issue in connection with accounting for expenses, the parties to the dispute or the Court shall attempt to appoint a Person having at least five (5) years of experience in that area of expertise. The arbitrator shall have the discretion to define the issues involved in the dispute. To the extent possible, all discovery shall be informal in accordance with a procedure and timetable prescribed by the arbitrator. The arbitrator shall employ all reasonable efforts to expedite the resolution of the dispute. The arbitrator shall determine how the cost of the Arbitration shall be allocated between and paid by the parties to the dispute.

11. Title and Mortgage Protection. No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consents in writing to such amendment. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other

interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage; provided, a lien arising under this Declaration shall have priority over the Mortgage if a notice of such lien is recorded prior to the date of recordation of a Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration except the obligation to subordinate its lien or security interest to this Declaration.

12. Insurance on Parcels Maintained by Owner.

a. Maintenance of Insurance. Each Owner shall, during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Utah and having a rating by Best's Insurance Reports of not less than A-/X, on all Buildings and other Improvements located on its Parcel (including the portion of the Circulation Roads located on such Owner's Parcel), a policy or policies of commercial general liability, bodily injury, personal injury and property damage liability insurance with combined single limits of at least Five Million Dollars (\$5,000,000). Each Owner shall, upon request thereof from Declarant or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section.

b. Waiver of Subrogation. Each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Section. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of all-risk insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Section shall provide that such insurance shall not be canceled or amended without ten (10) days prior written notice to the other Owners.

c. Right of Other Owners to Insure. If any such Owner shall fail to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then any other Owner shall have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice shall have a period of ten (10) days in which to cure such default. If the defaulting Owner does not cure such default within said ten (10) day period, the Owner(s) and/or tenant(s) giving the notice of default may do so and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days, then: (i) a five percent (5%) late payment fee shall be added to the invoice on the sixteenth (16<sup>th</sup>) day; (ii) the unpaid balance shall thereafter accrue interest at the rate of eighteen percent (18%) per annum; and (iii) all sums owing shall be secured by a lien against the Parcel owned by the invoiced Owner.

13. Indemnification. Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner ("Indemnitee") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Lot owned or leased by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its agents, servants, partners or employees.

14. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated by, but only by, an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by all of the Owners of all of the Parcels. The term of this Declaration (a) is perpetual with respect to all rights, interests, covenants, restrictions and easements associated with or related to the Circulation Roads and utility lines located therein, and (b) shall expire 365 days after delivery and recordation of written notice by the Owner of Retail Phase 1 or the Owner of Retail Phase 2 fifty (50) years after the date first written above with respect to all other covenants, restrictions and easements; provided, expiration after fifty (50) years shall not affect any other agreement, declaration, memorandum, notice or instrument of record. This Declaration shall be and remain in force and effect until terminated pursuant to this Section.

15. Covenants to Run with Land. This Declaration and the easements and covenants created by this Declaration are intended by the Declarants to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner any Person who acquires or comes to have any interest in any Parcel, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the easements, covenants, provisions, and requirements hereof shall also inure to the benefit of each and each Person owning any interest in or occupying any portion of a Parcel. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Parcel, the Person so acquiring, coming to have such interest in, or occupying a Parcel, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

16. Enforcement. Subject to the provisions of Section 10, the Owner of a Parcel or any portion of a Parcel shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration (including, without limitation, Arbitration pursuant to Section 10(c)) the party prevailing in such action or arbitration shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered.

17. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

18. Miscellaneous.

a. Titles, Captions and References. All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument.

b. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

c. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules that would apply the law of another jurisdiction.

d. Counterparts. This Declaration may be executed in any number of counterparts. Each such counterpart of this Declaration shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

e. Exhibits. All exhibits attached to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.

f. Time of Essence. Time is of the essence of this Declaration.

*(Signatures begin on following page)*


EXECUTED the day and year first above written.

"DECLARANTS"

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:   
Name: Steven B. Ostler  
Its: Manager

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

GATEWAY RETAIL MANAGER, INC., a Utah corporation

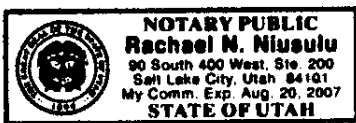
By:   
Name: Steven B. Ostler  
Its: President

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 5th day of May, 2005, by Steven B. Ostler, the Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, which is the Manager of BOYER GATEWAY, L.C., a Utah limited liability company, which is the general partner of GATEWAY ASSOCIATES, LTD., a Utah limited partnership.



*Rachael N. Niusulu*

NOTARY PUBLIC

Residing at: Salt Lake County, Utah

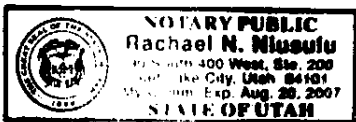
My Commission Expires: 8-20-07

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 5th day of May, 2005, by Steven B. Ostler, the Pres. of GATEWAY RETAIL MANAGER, INC., a Utah corporation, which is the manager of GATEWAY RETAIL HOLDINGS, L.C., a Utah limited liability company.



*Rachael N. Niusulu*

NOTARY PUBLIC

Residing at: Salt Lake County, Utah

My Commission Expires: 8-20-07

**CONSENT AND ACKNOWLEDGMENT**

The undersigned hereby acknowledge and consent to the foregoing Declaration of Covenants, Restrictions and Easements and the recording thereof in the Salt Lake County Recorder's Office and agree that the common elements of the respective condominium associations governed by the undersigned shall be subject thereto.

**GATEWAY BLOCK A CONDOMINIUM ASSOCIATION, INC.,** a Utah non-profit corporation

By: ~~\_\_\_\_\_~~  
Name: Steven B. Ostler  
Title: Sec/Treas.

**GATEWAY BLOCK B CONDOMINIUM ASSOCIATION, INC.,** a Utah non-profit corporation

By: ~~\_\_\_\_\_~~  
Name: Steven B. Ostler  
Title: Sec/Treas.

**GATEWAY BLOCK C-1 CONDOMINIUM ASSOCIATION, INC.,** a Utah non-profit corporation,

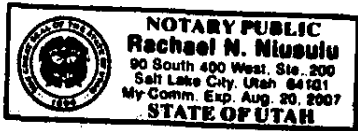
By: ~~\_\_\_\_\_~~  
Name: Steven B. Ostler  
Title: Sec/Treas.

**GATEWAY BLOCK C-2 CONDOMINIUM ASSOCIATION, INC.,** a Utah non-profit corporation,

By: ~~\_\_\_\_\_~~  
Name: Steven B. Ostler  
Title: Sec. Treas.

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

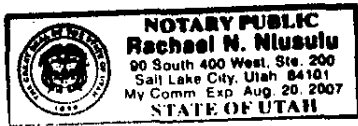
The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of May, 2005, by Steven B. Oster, the Sec/Treas. of Gateway Block A Condominium Association, Inc.



Rachael N. Niusulu  
Notary Public

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

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of May, 2005, by Steven B. Oster, the Sec/Treas of Gateway Block B Condominium Association, Inc.



Rachael N. Niusulu  
Notary Public



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

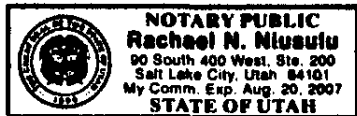
The foregoing instrument was acknowledged before me this 5th day of May, 2005, by Steven B. Oster, the Sec/Treas of Gateway Block C-1 Condominium Association, Inc.



Rachael N. Niusulu  
Notary Public

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

The foregoing instrument was acknowledged before me this 5th day of May, 2005, by Steven B. Oster, the Sec/Treas of Gateway Block C-2 Condominium Association, Inc.



Rachael N. Niusulu  
Notary Public

EXHIBIT "A"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Retail Phase 1 Parcels

The Property referred to in the foregoing instrument is located in Salt Lake County, Utah, and is more particularly described as follows:

RETAIL UNITS 1, 2 and 3, contained within the Block A Condominium Project as the same are identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on February 26, 2001, as Entry No. 7828968 (as said Record of Survey Map shall have heretofore been amended or supplemented, including that certain amended Record of Survey Map, recorded in the office of the Salt Lake County Recorder on December 6, 2002 as Entry No. 8448732, in Book "2002P" at Page 532 of Plats) (the "Block A Map") and in the Declaration of Condominium for Gateway Block A Condominium Project, recorded in the office of the Salt Lake County Recorder on February 26, 2001, as Entry No. 7828969, in Book No. 8427 at Page 4676-4750 (as said Block A Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in said Block A Condominium's Common Elements that is appurtenant to said Units as more particularly described in the Block A Declaration.

Tax Parcel Nos.: 15-01-177-002-0000, 15-01-177-003-0000, 15-01-177-010-0000 and 15-01-177-011-0000

RETAIL UNITS 1, 2 and 3, contained within the Block B Condominium Project as the same are identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder 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 the office of the Salt Lake County Recorder on February 26, 2001, as Entry No. 7828971, in Book No. 8427 at Page 4752-4829 (as said Block B Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in said Block B Condominium's Common Elements that is appurtenant to said Units as more particularly described in the Block B Declaration.

Tax Parcel Nos.: 15-01-131-001-0000, 15-01-131-002-0000, 15-01-131-003-0000 and 15-01-131-004-0000

RETAIL UNIT, contained within the Block C1 Condominium Project as the same is identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on December 27, 2000, as Entry No. 7788087, in Book 2000P at Page 364 of Plats (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "Block C1 Map") and in the Declaration of Condominium for Gateway Block C1 Condominium Project, recorded in the office of the Salt Lake County Recorder on April 27, 2001, as Entry No. 7881708, in Book No. 8450 at Page 4761-4842-A (as said Block C1 Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in said Block C1 Condominium's Common Elements that is appurtenant to said Unit as more particularly described in the Block C1 Declaration.

Tax Parcel No.: 15-01-185-001-0000

RETAIL UNIT 1, contained within the Block C2 Condominium Project as the same is identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on December 27, 2000, as Entry No. 7788089, in Book 2000P at Page 365 of Plats (as said Record of Survey Map shall have heretofore been amended or supplemented) (the "Block C2 Map") and in the Declaration of Condominium for Gateway Block C2 Condominium Project, recorded in the office of the Salt Lake County Recorder on April 27, 2001, as Entry No. 7881709, in Book No. 8450 at Page 4843-4926 (as said Block C2 Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in said Block C2 Condominium's Common Elements that is appurtenant to said Unit as more particularly described in the Block C2 Declaration.

Tax Parcel No.: 15-01-130-001-0000

LOT 4, 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.: 08-36-376-015-0000

#### Legal Description of the Union Pacific Depot Building

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.

#### Legal Description of "Parking Facilities"

PARKING UNITS 1 AND 2, contained within the Block A Condominium Project as the same are identified in the Record of Survey Map recorded in the office of the Salt Lake County Recorder on February 26, 2001, as Entry No. 7828968 (as said Record of Survey Map shall have heretofore been amended or supplemented, including that certain amended

Record of Survey Map, recorded in the office of the Salt Lake County Recorder on December 6, 2002 as Entry No. 8448732, in Book "2002P" at Page 532 of Plats) (the "Block A Map") and in the Declaration of Condominium for Gateway Block A Condominium Project, recorded in the office of the Salt Lake County Recorder on February 26, 2001, as Entry No. 7828969, in Book No. 8427 at Page 4676-4750 (as said Block A Declaration may have heretofore been amended or supplemented), TOGETHER WITH the undivided ownership interest in said Block A Condominium's Common Elements that is appurtenant to said Units as more particularly described in the Block A Declaration.

Tax Parcel Nos.: 15-01-177-012-0000 and 15-01-177-008-0000

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

Tax Parcel No. 15-01-131-007-0000

Legal Description of the "Central Plant"

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.

Tax Parcel No.: 15-01-131-008-0000

EXHIBIT "B"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Retail Phase 2 Parcels

The Property referred to in the foregoing instrument is located in Salt Lake County, Utah, and is more particularly described as follows:

LOTS 5, 6 and 7, 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.

EXHIBIT "C"  
TO  
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Site Plan

[Attached]