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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: SSP, DEPUTY - WI 9 P.

**AFTER RECORDING, PLEASE RETURN TO:**

David E. Gee, Esq.  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111

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**DECLARATION AND AGREEMENT  
REGARDING GATEWAY LOTS 6A AND 6B**

THIS DECLARATION AND AGREEMENT REGARDING GATEWAY LOTS 6A AND 6B (this "**Agreement**") is made this 23<sup>rd</sup> day of June, 2016, by GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("**Associates**").

**RECITALS:**

A. Associates and Gateway Retail Holdings, L.C., a Utah limited liability company ("**Holdings**") previously entered into a certain Declaration Of Covenants, Restrictions And Easements dated May 5, 2005 and recorded May 6, 2005 as Entry No. 9370292 in Book 9128, commencing at Page 605 of the official records of the Salt Lake County, Recorder (the "**2005 Declaration**"). Capitalized terms which are used but not defined in this Agreement shall have the same meanings as the corresponding capitalized terms used in the 2005 Declaration.

B. Associates and certain other Persons entered into a certain Agreement and Grant of Easements dated July 17, 2013 and recorded July 18, 2013 as Entry No. 11686490, in Book 10160, at Page 4556 of the official records of the Salt Lake County, Recorder (the "**2013 Agreement**").

C. At the time of recordation of the 2005 Declaration and the 2013 Agreement, Associates owned the Retail Phase 2 Parcels (as that term is defined in the 2005 Declaration and the 2013 Agreement).

D. As permitted by Section 8(a) of the 2005 Declaration and Section 5 of the 2013 Agreement, 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 (being one of the Retail Phase 2 Parcels was subdivided by Associates into: (i) a parcel on which certain retail, office and parking improvements have been constructed, the legal description of which is set forth on Exhibit "A" attached hereto (the "**6A Parcel**"); and (ii) a parcel on which certain retail improvements have been constructed, the legal description of which is set forth on Exhibit "B" attached hereto (the "**6B Parcel**").

E. Associates will create a condominium with respect to the 6A Parcel by recording the following in the Official Records of Salt Lake County creating the Condominium Units as defined in Section 1: (i) a Gateway Block D Condominium Plat dated of even date with this Agreement and

recorded following this Agreement (the "**Condominium Plat**"); and (ii) a Declaration of Condominium for Gateway Block D Condominiums dated of even date with this Agreement and recorded following this Agreement (the "**Condominium Declaration**").

F. Associates contemplates that it will sell all or some of the Condominium Units and desires to specify how the rights and obligations of the Owner of the Retail Phase 2 Parcels under the 2005 Declaration and the 2013 Agreement will, to the extent imposed on the Parcels (as defined below), be allocated between the Owner of the 6A Parcel and the Owner of the 6B Parcel.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Associates imposes the following agreements and covenants on the Parcels, all of which apply to, bind, affect and run with title to each Parcel (as defined below).

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

**"Condominium Units"** means the condominium units on the 6A Parcel as follows: Units 101, 102, 201, 202, 203 and 204, P-001 & P-002, contained within the Gateway Block D Condominiums as the same is identified in the Condominium Plat and in the Condominium Declaration, together with the undivided ownership interest in said Project's Common Elements that are appurtenant to said Units as more particularly described in said Declaration.

**"Condominium Units-Parking"** means Units P-001 & P-002.

**"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.

**"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 Agreement 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 Agreement.

**"Parcel"** means any one of the Parcels.

**"Parcels"** means the 6B Parcel and, as to the 6A Parcel, the Condominium Units.

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

2. **Compliance with the 2005 Declaration and 2013 Agreement.** Associates confirms that each of the Parcels is bound by the provisions of the 2005 Declaration and the 2013 Agreement. The Owner of the 6B Parcel acting alone shall enforce the rights of the Owners of the Parcels pursuant to the 2005 Declaration and 2013 Agreement. The provisions set forth below in Section 3 are intended to allocate among the Owners of the Parcels the burden, costs and obligations imposed on the Parcels (as part of the Retail Phase 2 Parcels) by the 2005 Declaration and 2013 Agreement. Except as expressly set forth below in Section 3, the Owner of the 6A Parcel shall have no right to enforce the rights of the Owners of the Parcels pursuant to the 2005 Declaration or the 2013 Agreement. In the event of any inconsistency between the terms of this Agreement and the 2005 Declaration or between this Agreement and the 2013 Agreement, then, as between the Owners and their respective Parcels, the terms of this Agreement shall control.

3. **Allocation of Certain Rights and Obligations.**

a. **Compliance with Nonmonetary Obligations.** The Owner of each Parcel (and the Owner of each Condominium Unit) shall comply or perform with any nonmonetary covenant or agreement of the 2005 Declaration and the 2013 Agreement that can only be complied with or performed by the Owner of the Parcel or the Condominium Unit.

b. **Rules and Regulations.** The Owner of the 6B Parcel shall have the right granted by Section 3.d of the 2013 Agreement and Section 5 of the 2005 Declaration to adopt, amend or modify all Rules and Regulations. Notwithstanding the foregoing, the Owner of Parcel 6B must obtain the written consent of the Owner of the Condominium Units-Parking to the amendment or modification of the Rules and Regulations regarding the use of the Parking Areas in the Condominium Units-Parking.

c. **Payment of Phase 2 Contribution.** The Owner of the 6B Parcel shall pay the Phase 2 Contribution required by Section 7.b of the 2005 Declaration and Section 3.e of the 2013 Agreement with respect to the Parcels without reimbursement or contribution by the Owner of the 6A Parcel.

d. **Maintenance of Circulation Roads.** The Owner of the 6B Parcel shall perform the maintenance obligations with respect to 50 North Street imposed on the Owner of the Retail Phase 2 Parcels set forth in Section 3.g of the 2005 Declaration without cost or expense to or reimbursement by the Owner of the 6A Parcel.

e. Other Rights and Obligations. To the extent not specifically identified above, the Owner of the 6B Parcel shall have the rights and perform the obligations of the Retail Phase 2 Parcels to the extent granted to or imposed on the Owners of the 6A Parcel or the 6B Parcel.

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

5. Title and Mortgage Protection. No amendment to this Agreement 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 Agreement 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 Agreement shall not defeat, impair or render invalid the lien of or other rights under any Mortgage; provided, a lien arising under this Agreement 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 Agreement except the obligation to subordinate its lien or security interest to this Agreement.

6. Dispute Resolution. The Owner of the 6B Parcel, acting alone, shall exercise the rights and powers granted to the Owner of the Retail Phase 2 Parcels pursuant to Section 7 of the 2013 Agreement.

7. 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 Indemnitor's breach of or default under this Agreement.

8. Amendment or Termination; Duration of Agreement.

a. Amendment or Termination of 2005 Declaration and 2013 Agreement. The Owner of the 6B Parcel acting alone shall have the right to make all decisions regarding any amendment, modification or termination of the 2005 Declaration and/or the 2013 Agreement on such terms and conditions as it reasonably determines; provided that the Owner of the 6B Parcel shall act in good faith and consult with the other Owners in connection with any amendment, modification or termination, and provided further that no such amendment, modification or termination that might reasonably be expected to have an adverse effect on the use of the Parking Areas in the

Condominium Units-Parking by the Owner of the Condominium Units-Parking will be made without the prior written consent of the Owner of the Condominium Units-Parking. Each other Owner agrees to execute such amendment, modification or termination upon the written request of the Owner of the 6B Parcel.

b. Amendment or Termination of this Agreement. This Agreement 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.

9. Covenants to Run with Land. This Agreement and the easements and covenants created by this Agreement are intended by the Owners 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 Agreement 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 Agreement. 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 Agreement.

10. Enforcement. 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 Agreement. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Agreement shall not result in or be construed to be an abandonment or termination of this Agreement or any waiver of the right to insist upon such performance or compliance with the terms of this Agreement 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 Agreement 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.

11. Effective Date. This Agreement, 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.

12. Miscellaneous.

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

b. Pronouns and Plurals. Whenever the contest may require, any pronoun used in this Agreement 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. Governing Law. This Agreement 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 Agreement may be executed in any number of counterparts. Each such counterpart of this Agreement 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 Agreement are expressly made a part of and incorporated in this Agreement as fully as though completely set forth in this Agreement.

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

*(Signatures begin on following page)*

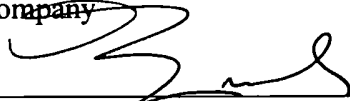
EXECUTED the day and year first above written.

**"ASSOCIATES"**

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: BRIAN GOCHMOUR  
Its: MANAGER

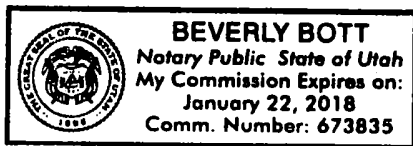
STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of June, 2016, by Brian Gochmour, a Manager of THE BOYER COMPANY, L.C., a Utah limited liability company, which is a Manager of BOYER GATEWAY, L.C., a Utah limited liability company, which is the general partner of GATEWAY ASSOCIATES, LTD., a Utah limited partnership.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

  
NOTARY PUBLIC  
Residing at: Salt Lake County, Utah

My Commission Expires: 1/22/18



**EXHIBIT "A"**  
**TO**  
**DECLARATION AND AGREEMENT**  
**REGARDING GATEWAY LOTS 6A AND 6B**

Legal Description of 6A Parcel

The following real property located in Salt Lake County, Utah, and more particularly described as:

Lot 6A, Boyer Gateway Lot 6 Amended Subdivision, filed as Entry No. 12306373 with the Salt Lake County Recorder.

Tax Parcel No.: 08-36-376-013  
(2016 PARENT NUMBER)



**EXHIBIT "B"**  
**TO**  
**DECLARATION AND AGREEMENT**  
**REGARDING GATEWAY LOTS 6A AND 6B**

Legal Description of 6B Parcel

The following real property located in Salt Lake County, Utah, and more particularly described as:

Lot 6B, Boyer Gateway Lot 6 Amended Subdivision, filed as Entry No. 12306373 with the Salt Lake County Recorder.

Tax Parcel No.: 08-36-376-013  
(2016 PARENT NUMBER)