

7817246

Please return to:
Salt Lake City Public Utilities
Attn: Karryn Greenleaf
1530 South West Temple
Salt Lake City, UT 84115

County Sidwell No.
08-36-376-007-2000; 15-01-176-001
15-01-126-004; 15-01-176-012

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02/08/2001 04:10 PM 30.00
Book - 8422 Pg - 8263-8273
BRADLEY A SNOW
CHIEF DEPUTY RECORDER, SL CO, UT
SL CITY PUBLIC WORKS
BY: ZJM, DEPUTY - WI 11 P.

1530 So. West Temple
SLC UT
84115

EASEMENT

GATEWAY ASSOCIATES, LTD., a Utah limited partnership, whose principal mailing address is 127 SO. 500 E. SLC UT 84102 ("Grantor"), hereby conveys to SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, whose mailing address for purposes of this Easement is 1530 South West Temple, Salt Lake City, Utah 84115, its successors-in-interest and assigns ("Grantee"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and reaffirmed, a perpetual non-exclusive easement and right-of-way for the construction, operation, and continued maintenance, repair, alteration, inspection and replacement, of storm drain, sewer and culinary water lines and facilities, together with all facilities attendant thereto, including any and all service lines, valves, drains, manholes and other related equipment and improvements (collectively, the "Facilities"), in, upon, over, under, across and through certain real property situated in Salt Lake County, State of Utah, and more particularly described on Exhibit A attached hereto, and hereby incorporated herein by this reference, together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto (collectively, the "Easement").

Without limiting the generality of the foregoing, Grantor does hereby covenant, warrant and agree with respect to the Easement as follows:

1. The Easement granted hereby is in addition to, and supplemental to, the easement granted pursuant to that certain North Temple Frontage Road Grant of Easement, dated as of January 3, 2000, and recorded in the Office of the Salt Lake County Recorder on JANUARY 13, 2000, as Entry No. 7553965, Book 8336, Page 1243. Nothing herein shall be construed as limiting any rights or privileges to which the Grantee is entitled under and pursuant to the North Temple Frontage Road Grant of Easement.

2. The Facilities for which the Easement is granted are to be constructed by Grantor, and ownership thereof is to be conveyed to Grantee, as contemplated by the North Temple Frontage Road Grant of Easement, and as more particularly provided for in that certain City Maintained Water, Sewer and Storm Drain Extensions Agreement (North Temple Frontage Road Utilities), dated as of **October 31, 2000**, by and between Grantor and Grantee (the "Extensions Agreement"), a copy of which Extensions Agreement is attached hereto as Exhibit B. All rights and privileges of Grantee under the Extensions Agreement shall be deemed a part of the easement, as fully and completely as if set forth herein.

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3. The Easement shall be for the entire width of the North Temple Frontage Road, as described in Exhibit A, and for the entire length of the North Temple Frontage Road, as finally constructed by Grantor (generally referred to herein as the "Easement Property"). The initial location of the Facilities constructed by Grantor shall not limit or restrict the use of the Easement by Grantee, or the ability of Grantee to move such Facilities to different locations within the Easement Property from time to time, as deemed reasonably necessary by Grantee; provided, however, that such relocation of the Facilities shall be compatible with Grantor's facilities and improvements, and provided further that such relocation, and the restoration of Grantor's facilities and improvements, shall be at the sole expense of Grantee. Grantor may, at its sole cost and expense, and with the written consent of Grantee, which shall not be unreasonably withheld or conditioned, relocate the Facilities within the Easement Property.

4. Subject to Section 9 of the Extension Agreement, Grantee shall have the right to cut and remove timber, trees, brush, overhanging branches, landscaping and improvements or other obstructions of any kind and nature which may injure or interfere with the Grantee's use, occupation or enjoyment of this Easement, without liability to Grantor and without any obligation of restoration or compensation, except to the limited extent provided for in the Extensions Agreement.

5. Grantee shall be entitled to unrestricted 24-hours per day, 365-days per year access to the Easement Property for all purposes related to the ownership, operation, maintenance, alteration, repair, inspection and replacement of the Facilities, subject only to such notice provisions as are set forth in the Extensions Agreement.

6. This Easement shall be liberally construed in favor of Grantee.

7. REPRESENTAION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER OFFICERS AND EMPLOYEES. The signatories represent that they have not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

Exhibit A

NORTH TEMPLE
FRONTAGE ROAD

EASEMENT BEGINNING AT A POINT 24.22 FEET SOUTH AND 0.81 FEET EAST OF THE SOUTHEAST CORNER OF LOT 7, BLOCK 83, PLAT "A", SALT LAKE CITY SURVEY; THENCE S 00°00'00" WEST, 20.00 FEET; THENCE SOUTH 89° 58' 47" WEST, 600.25 FEET; THENCE NORTH 00°00'00" EAST, 40.00 FEET; THENCE NORTH 89°58'47" EAST, 434.41 FEET; THENCE SOUTH 00° 00'44" EAST, 20.00 FEET; THENCE NORTH 89°58'47"EAST, 165.83 FEET; TO THE POINT OF BEGINNING AND CONTAINING 0.48ACRES. (20,693 SQUARE FEET)

C00-781

EXHIBIT B

CITY MAINTAINED
WATER, SEWER AND STORM DRAIN
EXTENSIONS AGREEMENT (NORTH TEMPLE
FRONTAGE ROAD UTILITIES)

RECORDED

OCT 31 2000

Account No. 2773.10
Watermain Extension No. 513504692
Sewermain Extension No. 525001795
Storm Drain Extension No. 53470674

CITY RECORDER

THIS CITY MAINTAINED WATER, SEWER AND STORM DRAIN EXTENSIONS AGREEMENT (NORTH TEMPLE FRONTAGE ROAD UTILITIES) (this "Agreement"), made and entered into as of _____, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah (the "City"), and GATEWAY ASSOCIATES, LTD., a Utah limited partnership, whose mailing address is 127 South 500 East, Suite 100, Salt Lake City, Utah 84102 (together with all successors and assigns being referred to hereinafter as the "Owner").

WITNESSETH:

WHEREAS, the Owner owns certain property situated in Salt Lake City at a location generally bounded by 200 South, 400 West, North Temple and 500 West, and is developing thereon a mixed-use residential, commercial and retail development (the "Development"); and

WHEREAS, the Owner will construct a private street through portions of the Development, which street shall be known as North Temple Frontage Road, and which is more particularly identified in Exhibit A attached hereto; and

WHEREAS, the Owner has granted to the City an easement for the construction, operation, maintenance, repair, alteration, inspection and replacement of storm drain, sewer and culinary water lines and facilities (all as more particularly described in Exhibit B attached hereto, and referred to collectively herein as the "Facilities"), in, upon, over, under, across and through North Temple Frontage Road; and

WHEREAS, North Temple Frontage Road is and will continue to be a private street owned by Owner; and

WHEREAS, the Facilities will be constructed in North Temple Frontage Road by and at the sole cost and expense of the Owner, and shall be owned, operated and maintained (subject to the Owner's warranty obligations hereunder) by the City; and

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WHEREAS, the parties hereto desire at this time to document their mutual agreement with respect to the acquisition, installation and construction and continued operation, repair, maintenance and other use of such Facilities,

NOW, THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. The acquisition, installation and construction of the Facilities (the "Work"), is hereby approved by the City. The Owner agrees to complete the Work not later than February 15, 2002. The Work shall be performed in accordance with the plans and specifications approved by the City and attached hereto as Exhibit B. Such Work shall conform in all material respects to standards established by the City. In connection with the Work, the Owner agrees to use only licensed and bonded contractors, and to obtain all permits and pay all fees, and in every way comply fully and completely with applicable state and federal laws, and all City ordinances, rules, regulations, policies and practices.

2. Concurrent herewith, the Owner agrees to provide a performance bond and a payment bond, in form and substance acceptable to the City, which shall guarantee complete performance by the Owner hereunder and payment for all labor and materials. The principal sum of each of such bonds shall be equal to the estimated cost of completing the Work, as set forth on Exhibit C attached hereto.

3. Within sixty (60) days after completion of the Work, the Owner agrees to provide to the City a certified statement of all expenditures made in connection with the Work, together with evidence that all labor and materials used and expended in connection with the Work have been fully paid for and there are no outstanding liens or encumbrances against the Facilities.

4. Upon completion of the Work, and written acceptance thereof by the Director of the City Department of Public Utilities (the "Director") the Facilities shall be and become the property of the City. All right, title and interest of the Owner in and to the same are hereby conveyed by the Owner to the City, effective as of the date of acceptance by the Director, and subject to the Owner's warranty obligations under paragraph 5 hereof. The Owner agrees to deliver to the City, at the sole cost and expense of the Owner, such further documentation effecting or confirming such conveyance as shall be requested by the City. Notwithstanding the foregoing, it is expressly agreed by the parties that

- (a) The City shall not accept ownership of any fire hydrants or associated vaults or other facilities, from the mainline connection to and including the hydrant. All such fire hydrants and related vaults and other facilities shall remain the property of the Owner, and the Owner shall be fully responsible for the operation, maintenance, repair, inspection, replacement

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and alteration thereof, in accordance with applicable standards, at the Owner's sole cost and expense; and

- (b) The storm drain facilities (including the entire collection system, pumped detention systems and the forced main discharge line which eventually discharges into the public catch basin in 100 South Street) shall be owned, operated and maintained, and shall otherwise be the full responsibility of, the Owner.

5. The Owner agrees to warrant the workmanship and materials of the Facilities installed and constructed in connection with the Work against defects therein, for a period of five (5) years after the later of either (i) completion of the Facilities and acceptance thereof by the Director, or (ii) placement into service of the culinary water lines and facilities and commencement of regular culinary water service to Owner's property. Accordingly, at all times prior to the end of such five (5) year period, the Owner shall, at its sole cost and expense, maintain and repair in accordance with standards established by the City, and shall be liable for and hold the City harmless (as described in paragraph 11 hereof) in connection with, all Facilities constructed and installed by the Owner in connection with the Work. Without limiting the foregoing, this warranty shall include and relate to any and all leaks, breaks and other damage, and loss of grade or development of reverse grade, caused by the settling of fill and backfill materials, or any other reason. During such five (5) year period, the Owner agrees to pay all costs and expenses of periodic inspection and testing by the City, including without limitation testing and televising the slopes and conditions of the gravity lines, for all of the Facilities. Thereafter, the City shall maintain such Facilities.

6. Any service connections with the Facilities shall be made as determined by the Director. For each service connection, the property owner for whom such connection is made shall pay all current City fees and costs for appropriate services, in accordance with City ordinance.

7. For a period of ten (10) years from the date hereof the Owner shall change the elevation of all Facilities if set at improper grades, and reset valve boxes, catch basins, clean-out boxes and/or manholes as necessary to conform with finished road grade.

8. The City shall be entitled to unrestricted 24-hours per day, 365 days per year access to North Temple Frontage Road for all purposes related to the ownership, operation maintenance, alteration, repair, inspection and replacement of the Facilities; provided that the City shall endeavor to provide Owner with not less than forty-eight (48) hours prior written notice of all scheduled work in connection with the Facilities, and that the City shall schedule such work so as to reasonably accommodate special events. Notices under this paragraph, or otherwise required by this Agreement, shall be mailed to the Owner by regular first-class mail, postage prepaid, at the address set forth above, or at such other address as the Owner provides to the City in writing.

9. The City shall use reasonable care in connection with all inspection, maintenance, repair or other work relating to the Facilities so as to avoid unnecessary damage to surrounding landscaping and other improvements of the Owner. However, the Owner recognizes and acknowledges that the landscaping and improvements installed in connection with and as part of the North Temple Frontage Road may be designed and constructed to standards, and include features of functionality and appearance, which exceed those associated with typical City streets and related amenities. Therefore, the Owner agrees that the City shall be obligated to restore and repair only the street surface, the curb, gutter and sidewalk, and any landscaping in the parking strip (or equivalent), and that such repair and restoration shall be made and conducted to the extent and in accordance with the same standards used by the City in connection with the restoration and repair of asphalt streets, concrete curb and gutter and grass landscaping. If Owner elects to restore the street surface, curb, gutter and sidewalk to original, higher standard it shall be permitted to do so and City shall pay to Owner the amount it would have expended pursuant to the foregoing sentence. The City shall not be responsible for any damage to facilities of the Owner except to the extent described in the foregoing sentence, including without limitation damage to plants, fountains, pavers, pump stations or private utilities or other improvements or amenities constructed by the Owner, and the Owner hereby releases and holds the City harmless from any such damage, and waives any and all related claims against the City and its employees, agents and assigns. The City may elect to pay to the Owner the City's estimated cost of the City's required level of repair and restoration, in which event the Owner will assume all responsibility for effecting the repair and restoration.

10. The Owner shall convey to the City in a manner acceptable to the City Attorney all easement rights necessary, as reasonably determined by the City Attorney, for the location, use, maintenance, operation, inspection, repair, alteration and replacement of the Facilities installed and constructed in connection with the Work. Said conveyances shall be made without cost to the City.

11. The Owner agrees to protect, indemnify, save harmless and defend the City, its agents and employees from and against any and all claims, demands, judgments, expenses and all other damages, injury and other liabilities of every kind and nature made, rendered or incurred by or on behalf of any person or persons whomsoever, including the parties hereto and their employees, which may arise out of the act or failure to act, work or other activity related in any way to the work performed by the Owner, the Owner's agents, employees, subcontractors or suppliers in connection with the construction, installation, maintenance or other use of the Facilities installed and constructed in connection with the Work, as herein contemplated. Owner's obligation under this paragraph 11 shall terminate at the end of the warranty period referenced in paragraph 5 above; provided, however, that this sentence shall operate solely as a termination of Owner's contractual obligation of indemnification hereunder, and not as a general release and waiver by City of any rights or remedies at law, in equity, or otherwise which City may be entitled to assert against Owner.

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12. This Agreement is not assignable.

13. This Agreement embodies the entire agreement of the parties and cannot be altered except through a written instrument signed by both parties.

14. Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. Owner represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

15. This Agreement shall be governed by the laws of the State of Utah and enforced only in the federal or state district courts in Salt Lake City, Utah.

IN WITNESS WHEREOF, the parties have executed this City Maintained Water, Sewer and Storm Drain Extensions Agreement (Rio Grande Utilities) as of the day and year first above written.

RECORDED

SALT LAKE CITY CORPORATION

OCT 31 2000

CITY RECORDER

By L. Roy W. Hooten
PUBLIC UTILITIES DIRECTOR

ATTEST AND COUNTERSIGN:

Cristina Neek
CHIEF DEPUTY CITY RECORDER



APPROVED AS TO FORM
Salt Lake City Recorder's Office

Date 10/30/00
By Chi B. Hall


GATEWAY ASSOCIATES, LTD.,
a Utah limited partnership,
by its General Partner

BOYER GATEWAY, L.C.,
a Utah limited liability company,

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by its Manager:

THE BOYER COMPANY, L.C.,
a Utah limited liability company

By 
H. ROGER BOYER
Chairman and Manager

STATE OF UTAH)
 : ss.
County of Salt Lake)

On _____, personally appeared before me LEROY W. HOOTON, JR. and _____, who being by me duly sworn did say that they are the PUBLIC UTILITIES DIRECTOR and CHIEF DEPUTY CITY RECORDER, respectively of SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah, and said persons acknowledged to me that said corporation executed the same.

NOTARY PUBLIC, residing in
Salt Lake County

My Commission Expires:

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the 22nd day of September, 2000, personally appeared before me H. Roger Boyer, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Chairman and 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 said document was signed by him on behalf of said entities.

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Barbara L. Clary

NOTARY PUBLIC, residing in
Salt Lake County, Utah

My Commission Expires:

Aug 1, 2004

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NOTARY PUBLIC
BARBARA L. CLARY
127 South 500 East #100
Salt Lake City, Utah 84102
My Commission Expires Aug. 1, 2004
State of Utah

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