

WHEN RECORDED, MAIL TO:

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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: HNP, DEPUTY - WI 12 P.

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DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (the "Declaration") is made and entered into as of the 1st day of September, 2001, by UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Union Pacific"), and GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("Gateway").

RECITALS

- A. Gateway owns a tract of real property located in Salt Lake County, State of Utah, the legal description of which is set forth on the attached **Exhibit "A"** (the "Gateway Tract").
- B. Union Pacific owns a tract of real property located in Salt Lake County, State of Utah, the legal description of which is set forth on the attached **Exhibit "B"** (the "Union Pacific Tract").
- C. Gateway intends to develop the Gateway Tract.
- D. Gateway and Union Pacific have agreed to grant reciprocal easements for ingress and egress of pedestrians and vehicles and for utility lines across a certain Easement Area (as defined below) which is located on the Union Pacific Tract and the Gateway Tract, upon the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Gateway and Union Pacific, intending to be legally bound and intending that the burdens and benefits by this Declaration run with, benefit and burden the Gateway Tract and the Union Pacific Tract (as such terms are defined below), hereby agree as follows:

1. Definitions. Certain capitalized terms have been defined above in this Declaration. In addition to those terms, the following terms shall have the meanings set forth:

(a) "Benefitted Persons" means those Persons who are entitled to the benefits created by this Declaration, determined as follows:

(i) All of the following Persons shall constitute Benefitted Persons of a Tract:

- (A) The Owner of such Tract;
- (B) Any Occupant of such Tract; and
- (C) The guests, customers, agents, employees, licensees or invitees of any Owner or Occupant described in subsections (A) and (B).

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(ii) Salt Lake City Corporation shall also be a Benefitted Person of the Gateway Tract.

(b) "Claims" means any and all claims, liens, demands, causes of action, controversies, offsets, obligations, losses, damages and liabilities of every kind and character whatsoever, including, without limitation, any action, omission, misrepresentation or other basis for liability founded either in tort, contract or otherwise and the duties arising thereunder, whether known or unknown, whether anticipated or unanticipated, whether in law or in equity, whether liquidated or unliquidated, contingent or otherwise.

(c) "Curb Cuts" mean the forty foot (40') wide areas at which the Benefitted Persons of the Union Pacific Tract shall have access from time to time from the Union Pacific Tract (including, without limitation, the parking lot on the Union Pacific Tract) to the Road and/or from portions of the Union Pacific Tract to other portions of the Union Pacific Tract.

(d) "Easement Area" means the areas described on **Exhibit "C"**.

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

(f) "Governmental Requirements" means all laws, ordinances, rules, requirements, resolutions, policy statements and regulations of Governmental Authorities bearing on the construction, alteration, rehabilitation, maintenance, use, operation or sale of a Tract.

(g) "Improvements" means the improvements to be made by Gateway to the Easement Area in accordance with the provisions of Section 4 (including, without limitation, the Road, Curb Cuts and parking lot access control), which improvements are described on **Exhibit "D"**.

(h) "Mortgage" means a recorded mortgage, deed of trust or other security agreement creating a lien on any Tract or portion of a Tract.

(i) "Mortgagee" means the mortgagee, beneficiary or other secured party under a Mortgage.

(j) "North Temple Agreement" means that certain agreement titled North Temple Frontage Road Grant of Easement, dated December 23, 1999 and recorded January 5, 2000 as Entry No. 7553965, in Book 8336, at Page 1263, of the Official Records of Salt Lake County, Utah.

(k) "Occupant" means any person that, by virtue of a contract to purchase, 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 a designated Tract or portion of a Tract.

(l) "Owner" means the Person that, at the time concerned, 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 any Tract, or portion of a Tract. In the event there is more than one Owner of the Tract involved at the time concerned, 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 relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee, beneficiary, trustee or other secured party unless and until such Person has acquired fee title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof.

(n) "Person" means a natural person or a legal entity.

(o) "Plat" means the plat map required by Salt Lake City Corporation to dedicate or assign to Salt Lake City Corporation the rights and easements which are granted by Union Pacific to Gateway pursuant to this Declaration.

(p) "Road" means the roadway to be located in the Easement Area.

(q) "Tract" means the Gateway Tract or the Union Pacific Tract.

(r) "Tracts" means the Gateway Tract and the Union Pacific Tract.

2. Grant of Easements By Gateway. Gateway hereby grants, conveys, creates and establishes for the benefit of the Benefitted Persons of the Union Pacific Tract the following easements across the Gateway Tract:

(a) Non-exclusive perpetual easements appurtenant to the Union Pacific Tract across that portion of the Easement Area which is located within the Gateway Tract, for the purpose of pedestrian traffic of the Benefitted Persons of the Union Pacific Tract over the sidewalks and other areas designed, constructed or designated as pedestrian walkways now or hereafter located on such portion of the Easement Area from and to the Union Pacific Tract.

(b) Non-exclusive perpetual easements appurtenant to the Union Pacific Tract across that portion of the Easement Area which is located within the Gateway Tract, for the purpose of furnishing access from and to the Union Pacific Tract for the vehicles of the Benefitted Persons of the Union Pacific Tract to and over the Road.

(c) Non-exclusive perpetual easements appurtenant to the Union Pacific Tract across that portion of the Easement Area which is located within the Gateway Tract, for the purpose of installing, operating and maintaining underground utility lines (including, without limitation, communication lines) and storm drainage pipes, drains and other related drainage facilities to serve the Union Pacific Tract.

3. Grant of Easements By Union Pacific. Union Pacific hereby grants, conveys, creates and establishes for the benefit of the Benefitted Persons of the Gateway Tract the following easements across the Union Pacific Tract:

(a) Non-exclusive perpetual easements appurtenant to the Gateway Tract across that portion of the Easement Area which is located within the Union Pacific Tract, for the purpose of pedestrian traffic of the Benefitted Persons of the Gateway Tract over the sidewalks and other areas designed, constructed or designated as pedestrian walkways, now or hereafter located on such portion of the Easement Area for access from and to the Gateway Tract.

(b) Non-exclusive perpetual easements appurtenant to the Gateway Tract across that portion of the Easement Area which is located within the Union Pacific Tract,

for the purpose of furnishing access from and to the Gateway Tract for the vehicles of the Benefitted Persons of the Gateway Tract to and over the Road.

(c) Non-exclusive perpetual easements appurtenant to the Gateway Tract across that portion of the Easement Area which is located within the Union Pacific Tract, for the purpose of installing, operating and maintaining underground utility lines and storm drainage pipes, drains and other related drainage facilities to serve the Gateway Tract.

4. Construction and Maintenance of Improvements.

(a) Gateway, at its cost and expense, shall cause the Improvements to be constructed in the Easement Area. The Improvements shall be substantially completed on or before January 31, 2002; provided such deadline shall be extended for reasonable periods on account of events beyond the control of Gateway. The construction of the Improvements in the Easement Area shall conform to the 50 North Road Plan and Profile and the 50 North Utilities Plan & Profile which are described on **Exhibit "D"**, and, without limitation of the foregoing, shall include forty foot (40') wide Curb Cuts and parking lot access control for the benefit of the Benefitted Persons of the Union Pacific Tract.

(b) Union Pacific hereby grants to Gateway the right to enter the Easement Area located on the Union Pacific Tract to construct, maintain, repair and inspect the Improvements.

(c) Union Pacific's access to the building located on the Union Pacific Tract, access from the building to the parking lot located on the Union Pacific Tract, and access from public roads to the parking lot located on the Union Pacific Tract, shall not be materially impeded by construction, maintenance, repair or inspection activities unless reasonable alternative temporary access routes are provided, which shall accommodate oversized vehicles. Union Pacific shall have the right to approve any temporary access route, which approval shall not be unreasonably withheld or delayed.

(d) Gateway, at no expense to Union Pacific, shall maintain (or cause to be maintained) the Improvements in good condition and repair and shall promptly repair (or cause to be repaired) any damage to the Improvements.

(e) If Gateway fails to maintain or repair the Improvements, then Union Pacific may perform any required maintenance or repair work, but only after providing prior written notice to Gateway and Salt Lake City Corporation setting forth in reasonable detail a description of the work which Union Pacific proposes to perform. Any work performed by Union Pacific shall comply with all Governmental Requirements of all Governmental Authorities including, without limitation, Salt Lake City Corporation. If Union Pacific performs the work described in the notice, Union Pacific may charge Gateway the reasonable cost of such maintenance or repair, together with interest at the rate of eight percent (8%) per annum.

(f) Gateway covenants and agrees that the Road will remain open except for periods required for repair and maintenance or to prevent a public dedication.

(g) The plans for any access or utility improvements in addition to the Improvements to be constructed by either Union Pacific or Gateway within the Easement Area shall be subject to the approval of the other party, which approval shall not be unreasonably withheld or delayed.

(h) Gateway acknowledges that fiber optic cable owned by Union Pacific is located in and under the Easement Area. Prior to undertaking any excavation or similar activities which could interfere with or damage such cable, Gateway agrees, at Gateway's expense, to locate such cable and to take all action necessary to avoid any interference with or damage to such cable.

5. Title and Mortgage Protection.

(a) Gateway and Union Pacific each covenant with respect to its Tract that the rights and obligations created by this Declaration are and shall be superior in right and title to the claims of any Mortgagee of such Tract.

(b) No amendment to this Declaration shall in any way affect the rights of any Mortgagee holding a Mortgage that is in effect at the time of the amendment or the rights of any successor in interest or title to such Mortgage, 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 consents in writing to such amendment.

(c) 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 Tract. 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 of a Mortgagee under any 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.

6. Protection of Parking on Union Pacific Tract. This Declaration does not create cross-parking rights between the Tracts or any right or privilege to park on either Tract. Without limiting the foregoing, the parking spaces located on the Union Pacific Tract shall be solely for the benefit of the Owner and Benefitted Persons of the Union Pacific Tract and shall not be used by the Benefitted Persons of the Gateway Tract. At the request of the Owner of the Union Pacific Tract, the Owner of the Gateway Tract shall establish and enforce rules and regulations which shall prevent the Benefitted Persons of the Gateway Tract from parking on the Union Pacific Tract. In addition, at the request of the Owner of the Union Pacific Tract, the Owner of the Gateway Tract shall also install such curbs or other physical features on the Gateway Tract as shall be consistent with Governmental Requirements and reasonably required to prevent Benefitted Persons of the Gateway Tract from accessing parking areas on the Union Pacific Tract.

7. Amendment or Termination; Duration of Declaration. This Declaration may be amended or terminated 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 both Tracts. The term of this Declaration is perpetual; this Declaration shall be and remain in force and effect until terminated pursuant to this Section.

8. Plat. Union Pacific agrees that it shall not be necessary for it to execute the Plat, and agrees that Gateway acting alone may execute the Plat. If Salt Lake City Corporation assumes all obligations of Gateway under this Declaration, Gateway may assign its rights and

easements created by this Declaration to Salt Lake City Corporation. Notwithstanding the foregoing, Union Pacific agrees to execute the Plat if required by Governmental Authorities.

9. Indemnification. Gateway shall indemnify, hold harmless and defend Union Pacific from and against:

(a) All Claims arising out of a breach of the obligations of Gateway to construct, maintain and repair the Improvements pursuant to Sections 4 and 5 of this Declaration except to the extent caused by the negligence or willful misconduct of Union Pacific, or its agents, contractors or employees.

(b) All Claims arising under the North Temple Agreement except to the extent caused by the negligence or willful misconduct of Union Pacific or its agents, contractors or employees.

(c) All Claims arising out of or in connection with the Plat except: (i) to the extent such Claims are caused by the negligence or willful misconduct of Union Pacific, or its agents, contractors or employees; and (ii) Claims by the City to enforce the rights to use the Easement Area in accordance with the terms of this Declaration.

(d) All Claims arising from Gateway's entry on the Easement Area located on the Union Pacific Tract for purposes described in Section 4(b), except to the extent caused by the negligence or willful misconduct of Union Pacific, or its agents, contractors or employees.

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

11. Enforcement. Any Person which is an Owner of a Tract or any portion of a Tract shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, rights, obligations, restrictions, covenants and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, rights, obligations, restrictions, 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, provisions, rights, obligations, restrictions, covenants and requirements of this Declaration in the future.

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

13. Titles, Captions and References. All section titles or captions in this Declaration are for convenience of reference 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 clearly refers to another agreement, document or instrument.

14. 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.

15. 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.

16. 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, but all such counterparts together shall constitute but one agreement.

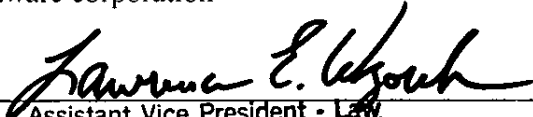
17. Exhibits. All exhibits attached to or otherwise referenced in this Declaration are expressly made a part of this Declaration as fully as though completely set forth in this Declaration.

18. Time of Essence. Time is of the essence in respect of this Declaration.

EXECUTED the day and year first above written.

"UNION PACIFIC":

UNION PACIFIC RAILROAD COMPANY, a
Delaware corporation

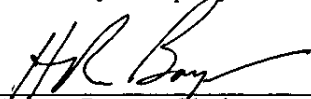
By 
Its: Assistant Vice President - Law

"GATEWAY":

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 
H. Roger Boyer, Chairman and Manager

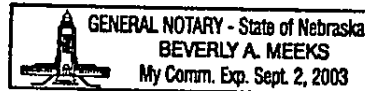
STATE OF NEBRASKA)
 : ss.
COUNTY OF DOUGLAS)

On this 28th day of February, 2003, before me the undersigned notary public personally appeared Lawrence E. Wzorok, known to me to be the Assistant Vice President - Law of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, named in and that executed the foregoing instrument and acknowledged to me that such corporation executed the same.

My Commission Expires:

9-2-03

Beverly A. MEEKS
NOTARY PUBLIC
Residing at: Omaha, Ne



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

On this 13th day of February, 2003, before me the undersigned notary public personally appeared H. ROGER BOYER, known to me to be the Chairman and 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 named in and that executed the foregoing instrument and acknowledged to me that such limited partnership executed the same.

My Commission Expires:

8/1/04

Barbara L. Clary
NOTARY PUBLIC
Residing at: Salt Lake County

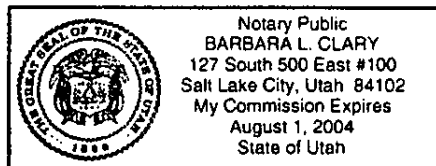


EXHIBIT "A"
TO
DECLARATION OF EASEMENTS

Legal Description of the Gateway Tract

The Gateway Minor Plat, Parcels 1 and 2, which are more particularly described as follows:

THE GATEWAY MINOR PLAT PARCEL 1:

BEGINNING at a point South 11.71 feet and West 1.35 feet from the Southeast corner of Lot 1, Block 80, Plat "A", Salt Lake City Survey, and running thence North 90°00'00" West 600.25 feet; thence North 00°00'00" East 1514.92 feet; thence North 89°59'06" East 12.00 feet; thence North 00°00'00" East 80.00 feet to the South line of Block 98, Plat "A", Salt Lake City Survey; thence along said Block line North 89°59'06" East 422.35 feet; thence South 00°00'12" West 142.21 feet; thence South 00°00'44" East 344.00 feet; thence North 89°58'47" East 165.83 feet; thence South 00°00'00" West 1108.89 feet to the point of BEGINNING.

THE GATEWAY MINOR PLAT PARCEL 2:

BEGINNING at the Southeast corner of Lot 1, Block 65, Plat "A", Salt Lake City Survey, and running thence South 89°58'15" West along the South Block line 402.13 feet; thence North 00°01'01" West 100.48 feet; thence North 90°00'00" West 27.03 feet; thence North 00°00'36" West 64.55 feet to the Southeast corner of the Utah Power and Light Company property; thence along the East line of said tract North 00°00'36" West 165.04 feet; thence along the North line of said tract South 89°58'20" West 171.24 feet; thence North 00°00'00" East 345.05 feet; thence South 90°00'00" East 600.27 feet; thence South 00°01'01" East 674.83 feet to the point of BEGINNING.

FOR REFERENCE PURPOSES ONLY:

TAX PARCEL / SIDWELL NOS.

PARCEL 1: 15-01-130-001 THROUGH 15-01-130-011, inclusive;
15-01-131-001 THROUGH 15-01-131-005, inclusive,
15-01-131-007 THROUGH 15-01-131-015, inclusive, and
08-36-376-012 THROUGH 08-36-376-016, inclusive.

PARCEL 2: 15-01-177-002, 15-01-177-003, 15-01-177-006, and
15-01-177-008 THROUGH 15-01-177-012, inclusive, and
15-01-185-001 THROUGH 15-01-185-004, inclusive.

EXHIBIT "B"
TO
DECLARATION OF EASEMENTS

Legal Description of Union Pacific Tract

A part of Lots 6, 7, 8, Block 83, Plat "A", Salt Lake City Survey, and being more particularly described as follows:

BEGINNING at a point North 89°58'50" East 43.96 feet and South 0°01'24" East 80.00 feet from the Northeast corner of Block 83, Plat "A", Salt Lake City Survey, and running South 0°01'24" East 274.40 feet; thence South 89°58'47" West 209.02 feet; thence North 0°00'44" West 344.00 feet; thence North 89°58'50" East 133.96 feet to a point of a 64.17 foot radius curve to the right; thence Southerly along the Arc of said curve 100.84 feet to a point of tangency; thence South 0°01'12" West 5.47 feet; thence South 89°58'48" East 10.83 feet to the POINT OF BEGINNING, and containing 1.61 acres.

FOR REFERENCE PURPOSES ONLY:
Tax Parcel / Sidwell No. 08-36-376-009

EXHIBIT "C"
TO
DECLARATION OF EASEMENTS

Legal Description of Easement Area

Perimeter Description of Easement Area:

EASEMENT BEGINNING at a point 4.22 feet South and 0.81 feet East of the Southeast corner of Lot 7, Block 83, Plat "A", Salt Lake City Survey; thence South 0°00'00" East, 40.00 feet; thence South 89°58'47" West, 600.25 feet; thence North 0°00'00" East, 40.00 feet; thence North 89°58'47" East, 600.25 feet to the POINT OF BEGINNING, and containing 0.55 acres. (24,010 sq. Ft.)

Portion of Easement Area located within Union Pacific Tract (part of above Perimeter Description):

BEGINNING at a point North 120.87 feet and East 0.77 feet from the Southeast corner of Lot 8, Block 83, Plat "A", Salt Lake City Survey; thence South 89°58'47" West 165.83 feet; thence North 00°00'44" West 20.00 feet; thence North 89°58'47" East 165.84 feet; thence South 20.00 feet to the POINT OF BEGINNING, and containing 0.76 acres (3,316.68 sq. ft.).

FOR REFERENCE PURPOSES ONLY:

Tax Parcel / Sidwell Nos. 08-36-376-009 (part)
08-36-376-012 (part)
08-36-376-013 (part)
08-36-376-014 (part)

EXHIBIT "D"
TO
DECLARATION OF EASEMENTS

Description of Improvements to Easement Area

1. 50 North Road Plan and Profile
Sheet Nos. C-3.5 and C-3.6
Last Issued 4/11/01
Prepared by Sear-Brown
2. 50 North Utilities Plan & Profile
Sheet Nos. C-6.5 and C-5.6
Last City Submittal 2/09/01
Prepared by Sear-Brown
3. Parking lot access control consisting of locked cable gate

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. LANDMARK TITLE COMPANY hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.