

When Recorded, Please Return To:
Robert A. McConnell
PARR WADDOUPS BROWN GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

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07/20/2004 04:37 PM 29.00
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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: EHB, DEPUTY - WI 10 P.

PARKING LICENSE AGREEMENT

DATE: June 30, 2004
LICENSOR: Gateway Retail Holdings, L.C., a Utah limited liability company
Address: 90 South 400 West, Suite 200
Salt Lake City, Utah 84101
LICENSEE: Gateway Office 1, L.C., a Utah limited liability company
Address: 90 South 400 West, Suite 200
Salt Lake City, Utah 84101

RECITALS

- A. Contemporaneously with the execution of this Agreement, Licensor has conveyed to Licensee, and Licensee has purchased from Licensor, Office Unit 1, contained within the Gateway Block B Condominium Project. (Capitalized terms which are used in this Agreement are defined in Section 2.)
- B. Licensor is the owner of certain Parking Facilities located within the Project that Licensor desires to make available to Licensee for use by Licensee and Licensee's employees.
- C. The terms upon which Licensor shall provide, and Licensee shall have the opportunity of using, the Parking Facilities are set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, including the mutual promises, covenants, and conditions set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

ORIGINAL

LTC 35207

1. **Definitions.** As used in this Agreement, the following words or terms shall have the meanings set forth:

A. "Base Parking Fee" means a monthly parking fee to be paid by Licensee to Licensor pursuant to Paragraph 3 of this Agreement. The initial Base Parking Fee is equal to the sum of Forty and 00/100 Dollars (\$40.00.) multiplied by the number of Parking Passes issued to the Licensee by Licensor in a given month, up to the number of parking spaces licensed pursuant to this Agreement. The Base Parking Fee is subject to annual increases as more fully set forth below.

B. "Declaration" means that certain 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 8427 at Pages 4752-4829, as the same may be amended from time to time.

C. "Gateway Project" means the mixed-use retail, office, and residential project located on Blocks 65, 80, and 83 in Salt Lake City, Utah.

D. "Office Unit 1" means the real property more particularly described on Exhibit "A" hereto.

E. "Parking Facilities" means the parking facilities located in the Project and more particularly described on Exhibit "B" hereto.

F. "Parking Pass" means the card, decal, or other identifying device which is used by Licensor from time to time to identify the individual persons or vehicles which enjoy the monthly parking rights granted pursuant to this Agreement.

F. "Permittees" means any person to whom Licensee delivers a Parking Pass; provided that Permittees shall be limited to, and Licensee shall only deliver Parking Passes to, persons regularly occupying or working in or at Office Unit 1.

G. "Project" means the real estate condominium project created by the Declaration, consisting of Condominium Units and Common Elements (as said terms are defined in the Declaration), known as the Gateway Block B Condominium Project.

2. **Parking Licenses.** Licensor hereby grants to Licensee: (a) the right to have up to 484 Parking Passes per month. Each Parking Pass confers a license on the holder thereof to utilize, in common with other owners and lessees in the Project and their respective invitees, on a non-exclusive, first-come-first-serve basis, a parking space in the Parking Facilities. Licensor shall operate the Parking Facilities in accordance with existing law and shall provide and maintain parking meeting the foregoing requirements notwithstanding the erection of new structures or the enlargement of existing structures within the Gateway Project.

3. **Base Parking Fees.** Licensee covenants to pay to Licensor the Base Parking Fee at the address for Licensor set forth at the outset of this Agreement or at such other place as Licensor may designate, in advance on or before the first day of each calendar month during the term hereof, commencing on July 1, 2004. If the initial distribution of Parking Passes by Licensor to Licensee does not occur so as to allow Permittees to utilize the Parking Facilities commencing on the first day of a calendar month, the Base Parking Fee shall be paid for the initial fractional calendar month (prorated on a per diem basis) and for the first full calendar month following the distribution of the applicable number of Parking Passes. Not less than five (5) business days prior to the beginning of a calendar month, Licensee shall inform Licensor of the number of initial Parking Passes or additional Parking Passes Licensee will require for the upcoming month. Upon receiving such request, Licensor shall deliver to Licensee the required number of Parking Passes; provided, however, that Licensor shall have no obligation to deliver additional Parking Passes to the extent that issuance of additional Parking Passes will cause Licensee to have in excess of 484 such passes. The Base Parking Fee for any given month shall be calculated on the basis of the number of Parking Passes issued to Licensee for that month. The Base Parking Fee may be reduced upon the return of previously issued Parking Passes, but only on a going forward basis and commencing on the first day of the first full month after the month during which the Licensee returns the undesired pass to Licensor; provided, however, that the Licensee must return such undesired passes on or before the fifth (5th) business day prior to the last day of the month in order to avoid paying the Base Parking Fee for the next month with respect to such undesired Parking Passes. Licensor agrees not to grant to any other person or entity whatsoever any exclusive parking in the Parking Facility, and to take measures to ensure that Permittees are reasonably assured of having a ready supply of parking spaces during the hours of 6:00 AM to 4:30 PM Monday through Friday, and 6AM to Noon on Saturdays.

4. **Adjustments to Base Parking Fee.** The Base Parking Fee shall be subject to increase on a calendar year basis on January 1st of each year (the "Adjustment Date") in an amount equal to the lesser of: (a) three percent (3%); or (b) the percentage increase in the Index, as hereinafter defined. The percentage increase in the Index shall be calculated as follows:

The Base Parking Fee will be adjusted by multiplying the then current Base Parking Fee by a fraction, the numerator of which is the Adjustment Index, as hereinafter defined, and the denominator of which is the Beginning Index, as hereinafter defined. The calculation shall be made within forty-five (45) days after the Index data becomes available for the relevant period and a corrected invoice shall be issued promptly for all invoices delivered prior to the Adjustment Date and the date the calculation is made. If the corrected invoice indicates that additional amounts are due Licensor from Licensee, Licensee shall pay such additional amounts within ten (10) business days after receipt of any such corrected invoice.

For purposes of such calculations, the "Index" shall be the Consumer Price Index (All Cities, Urban for All Items) (the "CPI"), the 2001 annual year-end CPI shall be the Beginning Index, and the "Adjustment Index" means the annual CPI for the twelve (12) months immediately preceding applicable Adjustment Date. In no event shall the Base Parking Fee be decreased as a result of a change in the Index, and the delay or failure of Licensor to compute or

to bill Licensee for any adjustment to be made pursuant to this Paragraph 4 shall not impair the continuing obligation of Licensee to pay the increased Base Parking Fee resulting from such adjustment.

5. Hourly Parkers and Validations. Licensor may charge the invitees of Licensee and its tenants who are not Permittees for parking in the Parking Facilities on an hourly basis; provided, however, that Licensor shall make hourly validations available to Licensee to cover parking at a cost equal to the then current publicly advertised cost of parking in the Parking Facilities for the comparable period.

6. Designated Parking Areas; Limitations and Rules. Permittees shall be permitted to park in the Parking Facilities so long as parking is available and so long as the Permittees do not violate the reasonable rules and regulations covering the use of the Parking Facilities promulgated from time to time by Licensor.

7. Indemnification. Licensee agrees to indemnify, defend, and hold Licensor harmless for, from, and against any injury, cost, liability, or expense to person or property arising out of Licensee's exercise of the rights granted by this Agreement, whether by Licensee, Licensee's employees or Licensee's Permittees, except to the extent such injury, cost, liability or expense arises out of the Licensor's negligence or willful misconduct.

8. Term. Except as specifically provided below, this Agreement shall be perpetual in nature and may not be terminated. Notwithstanding the foregoing, this Agreement shall terminate automatically and without any further action on behalf of the parties in the event the Project is terminated. This Agreement may not be terminated by Licensor for default on the part of Licensee; provided, however, that Licensor may bring an action for specific performance or damages and may terminate Licensee's use of the Parking Facilities for so long as the default remains uncured if User's default is either: (a) a failure to pay the Base Fee that is not cured within five (5) business days after written notice from Licensor to Licensee that Licensee's payment of the then applicable Base Fee is past due; or (b) distribution of Parking Passes in violation of this Agreement. Notwithstanding the foregoing, any Mortgagee (defined below) that acquires Office Unit 1 and Licensee's interest in this Agreement by foreclosure, trustee's sale or a deed in lieu thereof, and any transferee of such Mortgagee, shall be required to perform only such obligations under this Agreement arising from and after the date of the said Mortgagee's acquisition of Office Unit 1.

9. Successors and Assigns, Assignment, Appurtenance to the Land. Licensee's rights and obligations under this Agreement shall run with Office Unit 1, shall be appurtenant to Office Unit 1 and may not be partitioned or separated from Office Unit 1 or any part thereof, except as may be approved by Licensor in writing in connection with a subdivision of Office Unit 1 pursuant to the terms and conditions set forth in the Declaration. Except as specifically provided herein, no Assignment by Licensee of this Agreement or any rights hereunder shall be valid without the prior written consent of Licensor. Notwithstanding the foregoing, Licensee may, without the consent of Licensor, assign its rights, together with its obligations under this Agreement, to any subsequent owner of all or any part of Office Unit 1, including any mortgagee of all or any part of Office Unit 1. Upon any partial assignment, Licensor and Licensee shall

prepare and execute an agreement in form and content identical to this Agreement, which is limited in scope to the condominium Unit created incident to such assignment.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended without the written agreement of both parties, and, if applicable, any Mortgagee holding a first position lien of record (i.e. a lien created by a mortgage or deed of trust that is not subordinate to any other monetary lien or encumbrance, except liens for taxes or other liens which are given priority by statute) on either Office Unit 1 or the Parking Facilities. For purposes hereof, "Mortgagee" shall mean any person or entity (and any successor to the interest of any such person or entity) named as a mortgagee or beneficiary in any mortgage, deed of trust or other document pledging the Parking Facilities or Office Unit 1, as the case may be, or an interest therein as security for payment of a debt or obligation.

11. Miscellaneous. Both parties agree that, should either party default in any of the covenants or agreements herein contained, the prevailing party in litigation shall be entitled to all costs and expenses, including a reasonable attorney's fee. Time is of the essence with respect to the obligations of the parties to this Agreement.

12. Covenants Run With Land. This Agreement shall inure to the benefit of and be binding upon Licensor and Licensee and their respective successors and assigns, and the benefits and burdens created by this Agreement shall run with the land with respect to Office Unit 1 and the Parking Facilities.

13. Estoppel Certificates. Within 10 days after request, each party shall furnish to the other party, for use by such party and/or potential buyers, lenders, and tenants, a statement describing any alleged breaches of this Agreement, or if none, so stating, and such other matters relating to this Agreement as may reasonably be requested.


(Signatures Appear on the Following Page)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

"LICENSOR"

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

GATEWAY RETAIL MANAGER, INC., a Utah corporation




Steven B. Ostler, President

"LICENSEE"

GATEWAY OFFICE 1, L.C., a Utah limited liability company, by its Manager

GATEWAY OFFICE MANAGER, INC., a Utah corporation

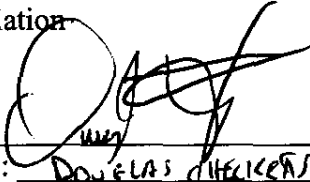
By: 

Steven B. Ostler, President
Vice

**CONSENT AND ACKNOWLEDGMENT OF
WELLS FARGO BANK, NATIONAL ASSOCIATION:**

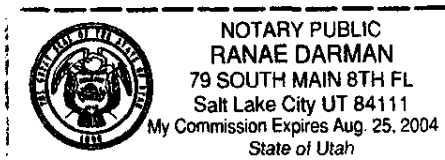
WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association ("Wells Fargo"), does hereby acknowledge and consent to the foregoing license of parking spaces within the Parking Facilities contemplated hereby. Wells Fargo does hereby subordinate the lien of (a) that certain Deed of Trust, dated February 14, 2001 the ("Deed of Trust"), executed by Licensor, as Trustor, in favor of Landmark Title Company, as Trustee, in favor of Wells Fargo, as Beneficiary, and recorded in the office of the Salt Lake County Recorder on March 7, 2001 as Entry No.7838029 in Book 8431 at Page 8788; and (b) that certain UCC Financing Statement (the "Financing Statement"), recorded on March 7, 2001 as Entry No. 7838030 in Book 8431 at Page 8811, to the rights of Licensee and its successors and assigns under this Agreement. Such subordination is solely intended to ensure that after any foreclosure of the Deed of Trust or pursuant to the Financing Statement, Licensee, and its successors and assigns, shall have the right to use of parking spaces within the Parking Facilities as set forth herein. Such subordination shall not be construed as a release of the collateral secured by the Deed of Trust or Financing Statement or a subordination of the Deed of Trust or Financing Statement as to any other recorded interest in the Project.


WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By: 
Name: DOUGLAS CHECKERS
Title: ASSISTANT VICE PRESIDENT

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

On this 7th day of ~~June~~ ^{July}, 2004, before me personally appeared Douglas Checkers who acknowledged himself to be the AUP of Wells Fargo Bank National Association, and being authorized to do so, he executed the foregoing instrument for the purposes therein contained, by signing the name of the company, by himself as such officer.



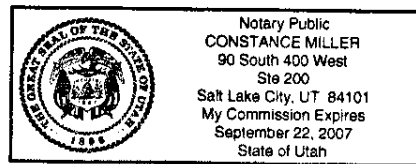

NOTARY PUBLIC

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

The foregoing instrument was acknowledged before me this 29th day of June, 2004, by Steven B. Ostler, the President of GATEWAY RETAIL MANAGER, INC., a Utah corporation, which is the Manager of GATEWAY RETAIL HOLDINGS, L.C., a Utah limited liability company.

Constance Miller

NOTARY PUBLIC



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

The foregoing instrument was acknowledged before me this 29th day of June, 2004, by Steven B. Ostler, President of GATEWAY OFFICE MANAGER, INC., a Utah corporation, which is the Manager of GATEWAY OFFICE 1, a Utah limited liability company.

Vice

Constance Miller

NOTARY PUBLIC

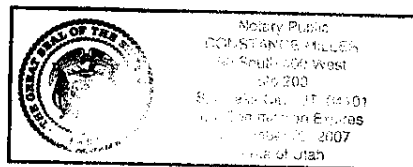


Exhibit A
To
Parking License

(Legal Description of Office Unit 1)

Office 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 Gateway Block B Declaration may have heretofore been amended or supplemented, the "Block B Declaration")), TOGETHER WITH the undivided ownership interest in said Gateway Block B Condominium's Common Elements that is appurtenant to said Unit as more particularly described in the Block B Declaration.

[FOR REFERENCE PURPOSES ONLY: Tax Serial (Sidwell)No. 15-01-131-005]

Exhibit B
To
Parking License

(Legal Description of Parking Facilities)

Parking 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 Gateway Block B Declaration may have heretofore been amended or supplemented, the "Block B Declaration")), TOGETHER WITH the undivided ownership interest in said Gateway Block B Condominium's Common Elements that is appurtenant to said Unit as more particularly described in the Block B Declaration.

[FOR REFERENCE PURPOSES ONLY: Tax Serial (Sidwell) No. 15-01-131-007]