

**AFTER RECORDING, RETURN TO:**  
Parr Waddoups Brown Gee & Loveless  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111  
Attn: David E. Gee

9370291  
05/06/2005 04:28 PM \$36.00  
Book - 9128 Pg - 595-604  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
LANDMARK TITLE  
BY: SEM, DEPUTY - WI 10 P.

**ENCROACHMENT AGREEMENT**

This Encroachment Agreement (this "Agreement") is entered into as of the <sup>5<sup>th</sup></sup> day of May 2005 by and among Gateway Associates, Ltd., a Utah limited partnership ("Associates"), Gateway Block A Condominium Association, Inc., a Utah corporation (the "Block A Association"), Gateway Block B Condominium Association, Inc., a Utah corporation (the "Block B Association"), Gateway Block C-1 Condominium Association, Inc., a Utah corporation (the "Block C-1 Association"), Gateway Block C-2 Condominium Association, Inc., a Utah corporation (the "Block C-2 Association"), and Gateway Retail Holdings, L.C., a Utah limited liability company ("Retail Holdings," and together with Associates, and the Block A, Block B, Block C-1 and Block C-2 Associations, the "Parties").

**RECITALS**

A. Retail Holdings is the record owner of: 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 ("Lot 3"); and 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 ("Lot 4").

B. Associates is the record owner of: Lot 5 of the 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 ("Lot 5"); Lot 6 of the 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 ("Lot 6"); and Lot 7 of the 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 ("Lot 7").

C. The Block A Association is the controlling association for the owners of the Condominium Units contained in the Gateway 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).

08-36-376-016  
08-30-376-015

08-36-376-014  
08-36-376-013  
08-36-376-012

15-01-177-009

15-01-131-009

D. The Block B Association is the controlling association for the owners of the Condominium Units contained in the Gateway 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).

15-01-185-004

E. The Block C-1 Association is the controlling association for the owners of the Condominium Units contained in the Gateway Block C-1 Condominium Project as the same are 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 Amended and Restated 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).

15-01-130-011

F. The Block C-2 Association is the controlling association for the owners of the Condominium Units contained in the Gateway Block C-2 Condominium Project as the same are 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 Amended and Restated 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).

G. Portions of each of Lot 3, Lot 4 and the Common Elements of the Gateway Block B Condominium Project are encumbered and benefited by that certain No Build Area (defined below) created pursuant to that certain Depot No Build Easement Agreement dated January 18, 2001 (the "No Build Easement"), and recoded in the office of the Salt Lake County Recorder on February 9, 2001 as Entry No. 7817943 in Book 8423 at Page 1139, which No Build Easement prohibits construction of building improvements on that certain portion of Lot 3 more particularly described in the No Build Easement as the "No Build Area."

H. Each of Lots 3, 4, 5, 6 and 7 and the property underlying the Blocks A, B, C-1 and C-2 Condominium Projects are subject to the No Build Easement.

I. There are certain minor encroachments (the "Existing Encroachments") into the No Build Area resulting from the construction of an existing building on Lot 4, which minor encroachments do not materially impair pedestrian access in the No Build Area.

J. Associates is presently planning the construction of a multi-story building on Lot 5 (the "Lot 5 Building"), a portion of which will be cantilevered over a small portion of the northwest corner of the No Build Area adjacent to Lot 5 running south from Lot 5 a maximum of 22 feet and east from the Barnes & Noble building on Lot 4 a maximum of 40 feet, all at a minimum height above ground level of approximately twenty (20) feet above the surface of the ground (the "Cantilever Encroachment"). This encroachment is depicted on Exhibit "A" attached hereto.

K. The Parties desire to accept the Existing Encroachments and the Cantilever Encroachment and waive any rights they may have to object to, prohibit or cause the removal of the same because the purpose of the No Build Easement will still be accomplished in a manner consistent with the intent of Associates in recording the No Build Easement.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties hereby accept and approve the Existing Encroachments and the Cantilever Encroachment, and waive any and all rights they may have to object to, prohibit or cause the removal of the Existing Encroachments or the Cantilever Encroachment.

2. Notwithstanding the rights contemplated by the No Build Easement, the Parties, as applicable, hereby grant unto the owners of Lot 4 and Lot 5 a perpetual right (the "Encroachment Right") on, over and across those portions of the No Build Area that are subject to Existing Encroachments and the Cantilever Encroachments.

3. The rights granted to the owner of Lot 5 hereunder include without limitation the right of ingress and egress to use the Lot 5 Building and to enter upon the No Build Area with such equipment as is reasonably necessary to from time to time install, maintain, repair, inspect, protect, remove and replace said Lot 5 Building and keep the Lot 5 Building free from ice, snow, debris and obstructions.

4. Any encroachment permitted under this Agreement shall not impair pedestrian ingress and egress across the No Build Area or access to the exterior walls of the historic Union Pacific Depot Building.

5. This instrument shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.


*[Remainder of Page Intentionally Left Blank.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

**RETAIL HOLDINGS:**

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

GATEWAY RETAIL MANAGER, INC., a Utah corporation


By:   
Name: Steven B. Oster  
Title: President

**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: Steven B. Oster  
Title: Manager




**BLOCK C-1 ASSOCIATION:**

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

By:   
Name: Steven B. Oster  
Title: Sec. / Treas.

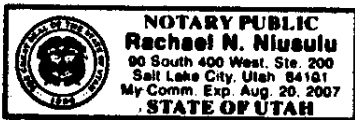
**BLOCK C-2 ASSOCIATION:**

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

By:   
Name: Steven B. Oster  
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, a 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.



Rachael N. Niusulu  
Notary Public

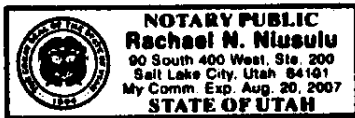
STATE OF UTAH )  
 ) SS:  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of May, 2005, by Steven B. Oster, the President of Gateway Retail Manager, Inc., which is the manager of Gateway Retail Holdings, L.C.

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 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 5th 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

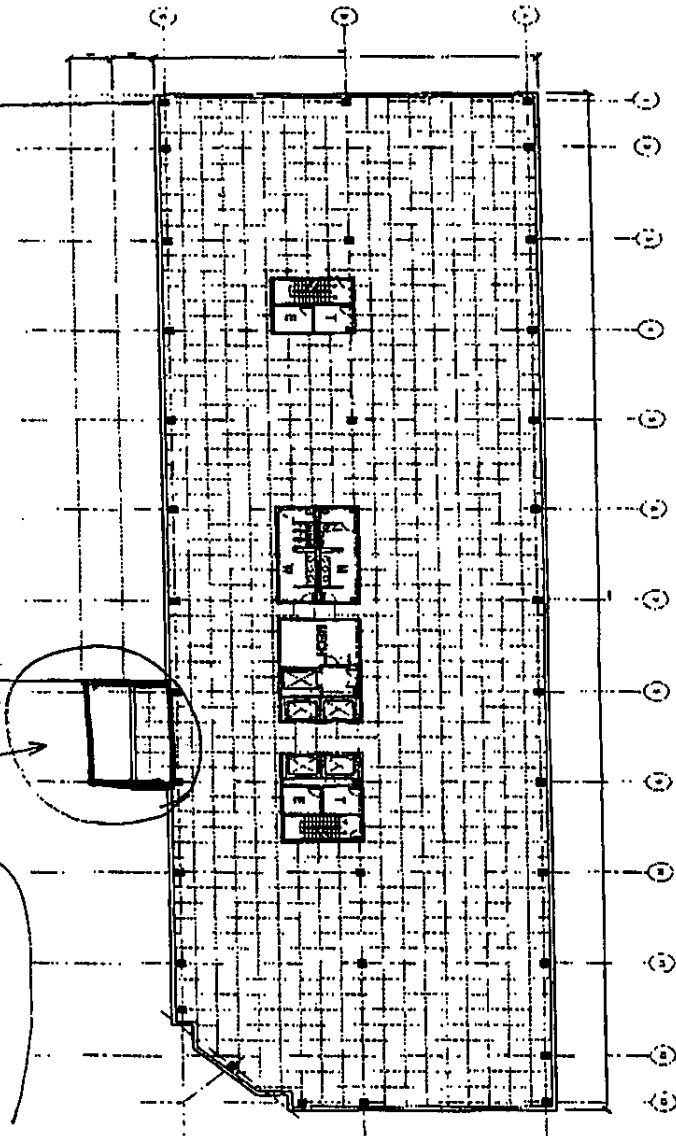


EXHIBIT "A"  
TO  
ENCROACHMENT AGREEMENT

**(See attached drawing)**

Barnes &  
Noble  
Building

ENCROACHMENT  
INTO  
NO-BUILD AREA



400 W.

| NO. | DESCRIPTION       | DATE     | BY  |
|-----|-------------------|----------|-----|
| 1   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 2   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 3   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 4   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 5   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 6   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 7   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 8   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 9   | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 10  | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 11  | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 12  | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 13  | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 14  | ISSUED FOR PERMIT | 11/11/11 | ERS |
| 15  | ISSUED FOR PERMIT | 11/11/11 | ERS |