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JUL 20 2012

4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

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ENT 64194:2012 PG 1 of 6  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2012 Aug 01 4:43 pm FEE 0.00 BY SS  
RECORDED FOR UDOT-

IN THE FOURTH DISTRICT COURT IN AND FOR  
UTAH COUNTY, STATE OF UTAH

<p>UTAH DEPARTMENT OF TRANSPORTATION,  Plaintiff,  vs.  UNIVERSITY MALL SHOPPING CENTER, L.C.; TITLE WEST TITLE COMPANY as Trustee; and SUN LIFE ASSURANCE COMPANY OF CANADA as Beneficiary,  Defendants.</p>	<p><b>ORDER OF IMMEDIATE OCCUPANCY</b>  Project No. F-0265(18)3 Parcel Nos. 2:E, 4:2E, 4:E Affecting Tax ID No. 57-043-0005 and 57-043-0007  Civil No. 120400850  Judge Samuel McVey</p>
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Plaintiff Utah Department of Transportation's Motion for Order of Occupancy having been submitted for decision, and the Court having reviewed the Memorandum in Support thereof and the pleadings and papers filed herein, and for good cause appearing,

IT IS HEREBY ORDERED:

1. Plaintiff, Utah Department of Transportation (“UDOT”), is a public agency having the power of eminent domain and is entitled to condemn the property easements that are the subject of this lawsuit.

2. The public use for which the power of eminent domain is being exercised in this matter is for state transportation purposes authorized under Utah Code Ann. §§ 72-5-103(1) and 78B-6-501.

3. That Plaintiff Utah Department of Transportation is granted the right to occupy the following premises, *pendente lite*, and to do whatever work thereon required in furtherance of the project described in Plaintiff’s Complaint in Eminent Domain:

Tax Id No. 57:043:0005

**Parcel No. 0265:2:E**

A temporary easement, upon part of an entire tract of property in Lot 5, University Mall Subdivision Plat “A”, according to the official plat thereof, recorded as Entry No. 19427:2001 Map #8962, in the office of the Utah County Recorder, situate in the NW1/4NE1/4 of Section 26, T.6 S., R.2 E., S.L.B.& M., in Utah County, Utah, for the purpose of constructing thereon roadway improvements, driveways, side treatments and appurtenant parts thereof and blending slopes to facilitate the widening of an expressway, State Route 265 (University Parkway, Orem), known as project F-0265(18)3.

Non-exclusive use. The easement acquired herein does not convey any right except as stated herein, nor does it prevent Defendant(s) from the use of the real property within the easement so long as such use does not interfere with the purposes for which the easement is being acquired. This easement does not convey the right to use the easement in a manner that would deny any right the Defendant may possess of reasonable access to property outside of the easement.

Duration of easement. The easement shall begin at the time actual construction of said project is commenced at the location of the easement, and shall continue for a period of the three

years or until the earlier completion of the project. The easement shall run with the real property and shall be binding on Defendant(s), their successors, heirs and assigns.

Restoration of property. UDOT will restore the real property as nearly as reasonably possible to its condition prior to any material disturbance from construction activities, consistent with project improvements.

The boundaries of said part of an entire tract are described as follows:

Beginning in the northerly right of way and limited-access line of said State Route 265, which point is 7.77 feet S. 89°20'29" W. (Note: subdivision plat bearing = N. 89°03'00" W.) from the Southeast corner of said Lot 5 (Note: said point is 80.00 feet radially distant northerly from the control line of State Route 265 of said project at Engineer Station 123+99.22); and running thence westerly 40.03 feet along the arc of a spiral which is concentric with and 80.00 feet radially distant northerly from a 400.00 foot ten-chord spiral for a 3°00' curve to the left (Note: Tangent to said spiral at it's point of beginning bears S. 89°16'53" W., Chord bears S. 89°02'43" W. 40.03 feet) along said northerly right of way and limited-access line; thence N. 1°26'14" E. 9.00 feet; thence S. 88°33'46" E. 13.00 feet; thence N. 1°26'14" E. 106.00 feet; thence S. 88°33'46" E. 27.00 feet; thence S. 1°26'14" W. 113.33 feet to the point of beginning. The above described part of an entire tract contains 3,188 square feet or 0.073 acre.

Tax Id No. 57-043-0007, 57-043-0005

**Parcel No. 0265:4:E**

A temporary easement, upon part of an entire tract of property in Lot 7, University Mall Subdivision Plat "A", according to the official plat thereof, recorded as Entry No. 19427:2001 Map #8962, in the office of the Utah County Recorder, situate in the NE1/4NE1/4 of Section 26, T.6 S., R.2 E., S.L.B.& M., in Utah County, Utah, for the purpose of constructing thereon roadway improvements, driveways, side treatments and appurtenant parts thereof and blending slopes to facilitate the widening of an expressway, State Route 265 (University Parkway, Orem), known as Project F-0265(18)3.

Non-exclusive use. The easement acquired herein does not convey any right except as stated herein, nor does it prevent Defendant(s) from the use of the real property within the easement so long as such use does not interfere with the purposes for which the easement is being acquired. This easement does not convey the right to use the easement in a manner that would deny any right the Defendant may possess of reasonable access to property outside of the easement.

Duration of easement. The easement shall begin at the time actual construction of said project is commenced at the location of the easement, and shall continue for a period of the three years or until the earlier completion of the project. The easement shall run with the real property and shall be binding on Defendant(s), their successors, heirs and assigns.

Restoration of property. UDOT will restore the real property as nearly as reasonably possible to its condition prior to any material disturbance from construction activities, consistent with project improvements.

The boundaries of said part of an entire tract are described as follows:

Beginning in the northerly right of way and limited-access line of said State Route 265, at the Southeast corner of said Lot 7 (Note: said point is 80.00 feet radially distant northerly from the control line of State Route 265 of said project at approximate Engineer Station 132+30.97); and running thence westerly 30.25 feet along the arc of a spiral which is concentric with and 80.00 feet radially distant northerly from a 400.00 foot ten-chord spiral for a 3°00' curve to the right (Note: Tangent to said spiral at it's point of beginning bears N. 78°20'36" W., Chord bears N. 78°01'52" W. 30.25 feet) along said northerly right of way and limited-access line; thence N. 0°48'32" W. 142.76 feet; thence N. 89°11'29" E. 29.50 feet to the easterly boundary line of said Lot 7; thence S. 0°48'32" E. 149.45 feet along said easterly boundary line to the point of beginning. The above described part of an entire tract contains 4,310 square feet or 0.099 acre.

(Note: Rotate above bearings 00°15'08" counterclockwise to equal highway bearings.)

**Parcel No. 0265:4:2E**

A perpetual easement, upon part of an entire tract of property in Lot 7, University Mall Subdivision Plat "A", according to the official plat thereof, recorded as Entry No. 19427:2001 Map #8962, in the office of the Utah County Recorder, situated in the NE1/4NE1/4 of Section 26, T.6 S., R.2 E., S.L.B. & M., in Utah County, Utah, incident to a Highway Improvement Project known as Project No. F-0265(18)3 and for the purpose of constructing and maintaining thereon electrical and/or power facilities, also for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of underground electric power distribution and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: wires, fibers, cables and other conductors and conduits therefore; and pads, transformers, switches, cabinets, and vaults on, across or under the surface of the real property more particularly shown on Exhibit "A", attached hereto and by this reference made a part hereof, and is described as follows:

Beginning at a point in the northerly right of way and limited-access line of State Route 265, University Parkway, Orem, which point is 52.61 feet westerly along the arc of a spiral which is concentric with and 80.00 feet radially distant northerly from a 400.00 foot ten-chord spiral for a 3°00' curve to the right (Note: Tangent to said spiral at it's point of beginning bears N. 78°20'36" W., Chord bears N. 78°00'15" W. for a distance of 52.61 feet) along said northerly right of way and limited-access line from the Southeast corner of said Lot 7 (Note: said point is 80.00 feet radially distant northerly from the control line of State Route 265 of said project at Engineer Station 131+78.187); and running thence 15.38 feet westerly along the arc of a spiral which is concentric with and 80.00 feet radially distant northerly from a 400.00 foot ten-chord spiral for a 3°00' curve to the right (Note: Tangent to said spiral at it's point of beginning bears N. 78°12'16" W., Chord bears N. 77°57'01" W. for a distance of 15.38 feet); thence N. 24°43'53" E. 61.98 feet; thence N. 0°48'32" W. 68.08 feet; thence S. 89°14'50" W. 26.51 feet; thence N. 0°45'10" W. 15.00 feet; thence N. 89°14'50" E. 41.50 feet; thence S. 0°48'32" E. 86.46 feet; thence S. 24°43'53" W. 62.01 feet to the point of beginning. The above described part of an entire tract contains 2,600 square feet.

(Note: Rotate above bearings 0°15'08" counterclockwise to equal Project F-0265(18)3 highway bearings.)

Together with the right of access to the right of way from Defendants adjacent lands for all activities in connection with the purposes for which this easement has been granted; and together with the present and (without payment therefor) the future right to keep the right of way clear of all landscaping, trees, structures, buildings and other hazards which might endanger or impede said purposes.

Subject to the foregoing limitations, Defendants may use the surface of the right of way for purposes not inconsistent with the easement; provided however, that at no time shall Defendant place or store any flammable materials or light any fires on or within the boundaries of the right of way.

The easement shall run with the land and bind Defendants' heirs, successors and assigns.

Exhibit "A" showing referenced perpetual easement follows.

4. Pursuant to Utah Code Ann. § 78B-6-510(2) , the Court has taken proof by affidavit, or otherwise, of the following:

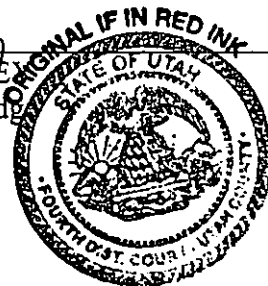
- (a) that UDOT's Administrative Compensation Estimates of value of the two property easements sought to be condemned is a total of \$77,525.00;
- (b) that UDOT's Administrative Compensation Estimates of value conclude that there will be no severance damage to the remaining tracts; and
- (c) that UDOT requires immediate occupancy of said easements to avoid the waste of public resources associated with project interruptions and delay.

5. Under this Order, UDOT shall deposit the sum of \$77,525.00 with the Clerk of the Court for the purposes set forth in Utah Code Ann. § 78B-6-510.

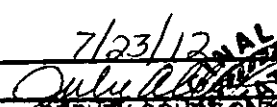
DATED this 20 day of July, 2012.

BY THE COURT:

  
 SAMUEL MCVEY  
 District Court Judge



I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, STATE OF UTAH

DATE: 7/23/12  
  
 DEPUTY COURT CLERK

