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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
11/4/2022 1:12:00 PM  
FEE \$0.00 Pgs: 7  
DEP eCASH REC'D FOR COTTONWOOD TITLE INS

WHEN RECORDED MAIL TO:

Layton City  
Attn: Legal Department  
437 N. Wasatch Drive  
Layton, UT 84041

File No.: 163543-KAP

## **Right of Occupancy Agreement**

In Reference to Tax ID Number(s):

11-075-0152

## RIGHT OF OCCUPANCY AGREEMENT

IN CONSIDERATION of the mutual covenants herein, the Owners and the City of Layton ("Layton") enter into this Right of Entry and Occupancy Agreement ("Agreement") and agree as follows:

- 1. SUBJECT PROPERTY.** The Subject Property referred to in this Agreement is identified as a portion of parcel number(s) 11-075-0152, more particularly described in Exhibit A, which is attached hereto and incorporated herein. The project which Layton is undertaking is the Flint Street-East Bound Right Turn Pocket project.
- 2. IMMEDIATE OCCUPANCY.** Owners hereby grant to Layton, its employees and contractors, including but not limited to utility service providers and their contractors working under the direction and control of Layton, the right to immediately occupy the Subject Property and to do whatever construction, relocation of utilities, and other work as required in furtherance of the above-referenced project. Owners represent and warrant that they have the right to grant occupancy of the Subject Property to Layton.
- 3. ADVANCE PAYMENT.** Layton agrees to pay Owners the sum of \$65,400.00 (the "Advance Payment") as consideration for entering into this Agreement and as an advance payment on the just compensation to be awarded in a court proceeding or through arbitration or settlement. The Advance Payment shall be applied as a credit towards amounts owed by Layton at a closing for sale of the Subject Property to Layton, or if Owner and Layton fail to agree on a purchase price for the Subject Property, the Advance Payment shall be considered a payment pursuant to Utah Code § 78B-6-510(3) in any lawsuit to condemn the Subject Property. Such Advance Payment shall have all of the rights and restrictions provided for in Utah Code § 78B-6-510. Notwithstanding the foregoing, Layton shall at all times maintain water and irrigation for the Subject Property to the same degree and frequency that such water and irrigation existed prior to this Agreement.
- 4. THIRD PARTIES.** The parties to this Agreement understand that a title report may indicate that other third parties may have a claim to part of the proceeds being paid by City to the Property Owner under this Agreement. It is not the intent of the Agreement to properly assess potential third-party claims. In the event it is later determined that part of the Advance Payment should properly be paid to other third parties, then City will have the right to require the Property Owner pay such third parties in order to provide a clear title, free of liens and encumbrances, to the City for the Subject Property. In the event that City desires to obtain title insurance on the Subject Property, in connection with the purchase of the Subject Property, the City will pay the premiums for the title coverage.

Right of Occupancy Agreement - Barlow

**5. PURPOSE OF AGREEMENT.** Layton requires immediate occupancy of the Subject Property so that construction of the above-referenced project can begin. This Agreement alleviates the need to immediately file an eminent domain lawsuit to obtain occupancy and allows Owner and Layton to continue negotiations for the sale of the Subject Property and interests therein. Upon receipt and acceptance of the Advance Payment, Owners abandon all defenses to a condemnation lawsuit except a claim for greater compensation, as provided in Utah Code § 78B-6-510.

**6. IF NEGOTIATIONS ARE SUCCESSFUL.** Layton and Owners agree that negotiations under this Agreement will be deemed to be successful only if the terms of sale to Layton of all interests in the Subject Property have been set forth in fully signed written contract(s).

**7. IF NEGOTIATIONS ARE UNSUCCESSFUL.** If Layton and Owners have not entered into a written contract or contracts for the sale to Layton of all interests of Owners in the Subject Property within 90 days following the last signature to this Agreement, Layton shall then file a lawsuit to condemn the Subject Property. Upon written request by Owners, LAYTON will commence a condemnation lawsuit within 30 days following such request. Such notice may be given by Owner at any time. The occupancy granted to Layton under this Agreement shall continue throughout any lawsuit to condemn the Subject Property, but Layton shall have the right to move for and obtain a court order of occupancy, which Owners agree not to contest so long as it is not materially inconsistent with this Agreement.

The date on which the right to compensation and damages, if any, shall be deemed to have accrued for purposes of a condemnation lawsuit or other valuation proceeding, shall be the date of the first signature to this Agreement, or other date as ordered by the court.

**8. NOTICES AND REQUESTS.** All notices or requests required or contemplated under this Agreement shall be (a) in writing; (b) signed by the Owner or Layton; and (c) sent by certified U.S. mail to the Owners at the address set forth below, or to Layton at: 437 North Wasatch Drive, Layton, UT 84041.

**9. LAYTON'S RIGHT TO CANCEL.** If the Subject Property becomes unnecessary for a public use or is no longer required for the construction of the project referenced above, Layton may cancel this Agreement by written notice to Owners and will have no obligation to purchase or condemn the Subject Property. However, Layton will jointly pay Owners, in accordance with their interest, the reasonable rental value of the Subject Property for the period of occupancy and will restore the Subject Property due to any disturbance or construction caused by Layton during occupancy, or in the alternative, Layton may elect to pay Owner the cost of such restoration. The Advance Payment shall be repaid to Layton in accordance with Utah law. In addition, if Layton cancels this Agreement, it shall be considered an abandonment pursuant to Utah Code § 78B-6-517 and all provisions of that Section shall apply.

Right of Occupancy Agreement - Barlow

DATED this 4th day of November, 2022

OWNER(S)

  
Debra J. Barlow

STATE OF UTAH            )  
                                      : SS  
COUNTY OF DAVIS        )

On this 4th day of November, 2022, personally appeared before me Debra J. Barlow, signer of the foregoing Right of Occupancy Agreement, who duly acknowledged to me she executed the same.



  
NOTARY PUBLIC

Right of Occupancy Agreement - Barlow

DATED this 3<sup>rd</sup> day of November, 2022



LAYTON CITY, a Municipal Corporation

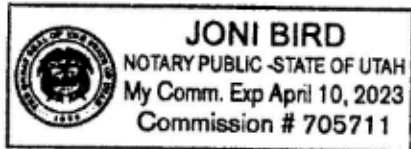
Joy Petro  
JOY PETRO, Mayor

ATTEST:

Kimberly S Read  
KIMBERLY S READ, City Recorder

STATE OF UTAH            )  
  : SS  
COUNTY OF DAVIS        )

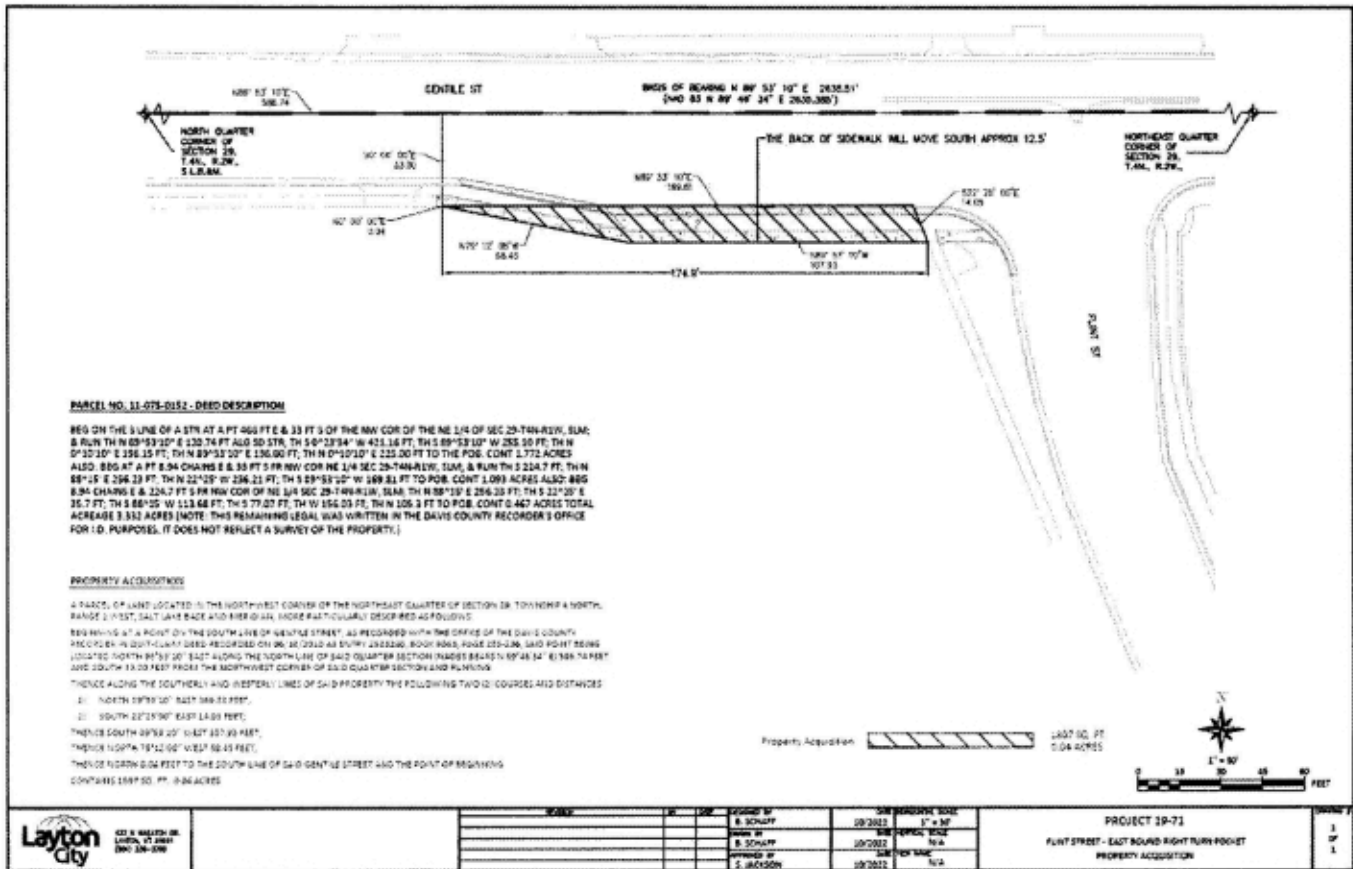
On this 4<sup>th</sup> day of November, 2022, personally appeared before me JOY PETRO, who duly acknowledged to me that she is the MAYOR of LAYTON CITY, and that the document was signed by her in behalf of said corporation, and JOY PETRO acknowledged to me that said corporation executed the same.



Joni Bird  
NOTARY PUBLIC

Right of Occupancy Agreement - Barlow

EXHIBIT A



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

A PARCEL OF LAND LOCATED IN THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF GENTILE STREET, AS RECORDED WITH THE OFFICE OF THE DAVIS COUNTY RECORDER IN QUIT-CLAIM DEED RECORDED ON JUNE 10, 2010 AS ENTRY NO. 2533240, IN BOOK 5043, AT PAGES 235-236, SAID POINT BEING LOCATED NORTH 89°53'10" EAST ALONG THE NORTH LINE OF SAID QUARTER SECTION (NAD83 BEARS NORTH 89°46'34" EAST) 586.74 FEET AND SOUTH 33.00 FEET FROM THE NORTHWEST CORNER OF SAID QUARTER SECTION AND RUNNING THENCE ALONG THE SOUTHERLY AND WESTERLY LINES OF SAID PROPERTY THE FOLLOWING TWO (2) COURSES AND DISTANCES 1) NORTH 89°53'10" EAST 169.81 FEET; 2) SOUTH 22°25'00" EAST 14.05 FEET; THENCE SOUTH 89°53'10" WEST 107.93 FEET; THENCE NORTH 79°12'08" WEST 68.45 FEET; THENCE NORTH 0.04 FEET TO THE SOUTH LINE OF SAID GENTILE STREET AND THE POINT OF BEGINNING.

Tax Id No.: 11-075-0152