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08-052-0195

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AUG 15 2002
SECOND
DISTRICT COURT

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E 1781364 B 3114 P 552
SHERYL L. WHITE, DAVIS CNTY RECORDER
2002 AUG 28 11:50 AM FEE 22.00 DEP MEC
REC'D FOR UTAH DEPT OF TRANSPORTATION

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH

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|---|--|
| <p>UTAH DEPARTMENT OF TRANSPORTATION,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>VINCE C. HESS and SUZANNE L. HESS, n/k/a Flying U Properties II, LC, and Pioneer Legacy Properties II, LC,</p> <p style="text-align: center;">Defendants.</p> | <p style="text-align: center;">ORDER OF IMMEDIATE OCCUPANCY</p> <p>Project No. SP-0067(1)0 Parcel Nos. 0067:253:A</p> <p>Civil No.010700301</p> <p>Judge Darwin C. Hansen</p> |
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Having read the Stipulation entered into among the parties on July 30, 2002 (attached) and the pleadings on file in this case and good cause appearing therefore,

IT IS HEREBY ORDERED AND ADJUDGED, that the Plaintiff has the right of eminent domain and that the purpose for which the premises are sought by this action is public in nature and that the property is needed for that use.

IT IS FURTHER ORDERED that the Plaintiff be and is hereby permitted and authorized to occupy the premises belonging to the Defendants above-named subject to the provisions hereinafter contained. The premises are sought for highway or highway related purposes. All of the property interests or other rights as acquired by the Plaintiff herein, and the property belonging to the Defendants as affected thereby are particularly set out and described in the Amended Complaint on file in this action, and in the condemnation amended resolution filed in this action, a copy of which is hereto attached as Exhibit A. The Plaintiff is hereby permitted to take possession of said properties of said Defendants upon the passage of ten calendar days of advance notice given by the Plaintiff to the Defendants prior to actual need for construction, and after having complied with the conditions contained in this Order, and to continue the possession of the same pending further hearing and trial on the issues that may be raised in this action and to do such work thereon as may be required for the purposes for which said premises are sought to be condemned and according to the nature thereof.

IT IS FURTHER ORDERED that the Plaintiff shall construct a proper livestock fence and double-wide gate conveniently located along the right of way between the property being condemned and the remainder of Defendants' property, on the south end.

IT IS FURTHER ORDERED that the Plaintiff shall place permanent corner markers upon the property to be condemned sufficient to clearly show the boundaries between the

property taken and Defendants' remaining property, no later than upon completion of the construction.

IT IS FURTHER ORDERED that since the original property sought to be taken has effectively been abandoned, the Defendants shall be awarded an attorney fee as a cost pursuant to Utah Code Annotated, Section 78-34-16, in the amount of \$12,500, which sum represents attorneys fees expended to date by Defendants' attorney. Such sum shall be paid by Plaintiff as soon as possible using diligent effort.

IT IS FURTHER ORDERED that before taking possession of the Defendants' property as herein provided, the Plaintiff shall deposit with the Clerk of the Court the full amount of its approved appraisal for the use and benefit of the Defendants.

IT IS FURTHER ORDERED that on receipt of said moneys the Clerk of this Court shall remit the same to the Defendants or their counsel upon their request.

DATED this 14 day of July, 2002.

BY THE COURT:

Darwin C. Hansen
DARWIN C. HANSEN
District Court Judge

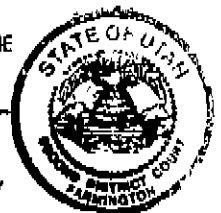
STATE OF UTAH }
COUNTY OF DAVIS } ss.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL ON FILE IN MY OFFICE.

DATED THIS 15 DAY OF AUG 2002

ALYSON S. BROWN
CLERK OF THE COURT

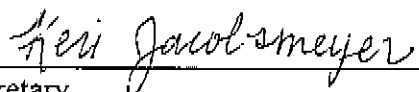
BY K. R. DEPUTY



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER OF IMMEDIATE OCCUPANCY was mailed, postage prepaid, this 9 day of August, 2002, to:

Matthew V. Hess
Armstrong Law Offices P.C.
Suite 150 Bank One Tower
50 West Broadway
Salt Lake City, UT 84101-2006


Secretary

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EXHIBIT A

C1*0067*253:A
Ref. CO*0067*253

AMENDED CONDEMNATION RESOLUTION
HIGHWAY PROJECT NO. SP-0067(1)0
Legacy Parkway I-215 to US-89

- I. The Utah Department of Transportation (UDOT) has determined:
1. The public interest and necessity require the acquisition and immediate occupancy of the real property, or interest in real property, described in a Resolution filed on September 18th of 2001, in the District Court for the County of Davis, Case No. 010700301 and
 2. That the public interest and necessity require the acquisition and immediate occupancy of the property described below and the resolution is hereby amended to revise the ownership from Vince C. Hess & Suzanne L. Hess to the ownership of Flying U Properties II, LC. ½ interest and Pioneer Legacy Properties II, LC. ½ interest. Also Parcel No. 253 is now 253:A and the description is revised. The original estimated appraisal was \$76,100.00 and the new estimated appraisal is \$60,500.00
 3. No other information on the original condemnation resolution is in need of change.
- II. UDOT requests that the Attorney General of Utah:
1. Take action as needed to amend the Complaint and any other judicial pleading to acquire and obtain immediate occupancy of the property.
- III. UDOT requests that the State Finance Director:
1. Prepare a state warrant in the amount of the approved appraisal of each parcel of real property as described in this Amendment.

The real property, or interest in real property, for which UDOT is authorizing acquisition, is located in the County of Davis and is already filed in this court entitled Utah Department of Transportation v. Vince C. Hess & Suzanne L. Hess, Case Number 010700301.

The real property, or interest in real property, which the Department is by this amended resolution authorized to acquire, is described as follows:

C1*0067*253:A
Ref. CO*0067*253

HIGHWAY PROJECT NO. SP-0067(1)0

RECORDED OWNER: Flying U Properties II, LC, a Utah limited liability Company
ADDRESS: 947 North Main Street
Farmington, Utah 84025

RECORDED OWNER: Pioneer Legacy Properties II, LC, a Utah limited liability Company
ADDRESS: 947 North Main Street
Farmington, Utah 84025

LIEN HOLDER: None of record

APPROVED APPRAISAL: \$60,500.00

Tax Id.: 08-052-0195

Parcel No. 0067:253:A

A parcel of land in fee for the widening of an expressway State Route 89 known as Project No. 0067, being part of an entire tract of property, situate in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T. 3 N., R. 1 W., S.L.B. & M. The boundaries of said parcel of land are described as follows:

Beginning in the easterly highway right of way and limited-access line of said existing expressway at the Northwest corner of said entire tract, which point is 193.129 m (633.63 ft.) N 0°07'38" E along the Quarter Section line and 287.606 m (943.59 ft.) S 89°31'23" W (deed of record S 88°59'55" W) from the center of said Section 13 as monumented with a county Brass Cap; and running thence S 21°24'40" E (deed of record S 21°12' E) 84.795 m (278.20 ft.), more or less, along said easterly highway right of way and limited-access line to a northeasterly frontage road right of way line of record; thence Southeasterly 34.171 m (112.11 ft.) along said northeasterly frontage road right of way line, along the arc of a 22.860 m (75.00 ft.) radius curve to the right (Note: Chord to said curve bears S 64°09'34" E for a distance of 31.077 m (101.96 ft.)); thence S 21°30'58" E 5.377 m (17.64 ft.); thence S 89°14'22" E (deed of record S 89°06' E) 14.241 m (46.72 ft.) along the southerly boundary line of said entire tract; thence N 17°23'24" W 10.560 m (34.65 ft.); thence N 67°59'33" W 14.319 m (46.98 ft.); thence N 18°36'36" W 77.487 m (254.22 ft.); thence S 67°56'32" W 6.372 m (20.91 ft.); thence Northerly 12.300 m (40.35 ft.), more or less, along the arc of a 1,509.848 m (4,953.57 ft.) radius curve to the left (Note: Chord to said curve bears N 22°10'32" W for a distance of 12.300 m (40.35 ft.)) to the northerly boundary line of said entire tract; thence S 89°31'23" W (deed of record S 88°59'55" W) 23.429 m (76.87 ft.), more or less, along said northerly boundary line to the point of beginning. The above described parcel of land contains 2,438.6 square meters (0.603 acre), more or less.

08-052-0195

Together with any and all water rights appurtenant to the above described parcel of land.

To enable the Utah Department of Transportation to construct and maintain a public highway as an expressway, as contemplated by Title 72, Chapter 6, Section 117, Utah Code Annotated, 1998, as amended, the Owners of said entire tract of property hereby release and relinquish to said Utah Department of Transportation any and all rights appurtenant to the remaining property of said Owners by reason of the location thereof with reference to said highway, including, without limiting the foregoing, all rights of ingress to or egress from said Owner's remaining property contiguous to the lands hereby conveyed to or from said highway.