

FILED DISTRICT COURT
Third Judicial District

MAY - 5 2011

SALT LAKE COUNTY
By [Signature]
Deputy Clerk

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RECORDER, SALT LAKE COUNTY, UTAH
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BY: ZJM, DEPUTY - WI 8 P.

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

- POOR COPY -
CO. RECORDER

UTAH DEPARTMENT OF
TRANSPORTATION,

Plaintiff,

vs.

HCPI/UTAH, LLC; BOYER DESERET
SPRINGS, L.C.; THE BOYER COMPANY,
L.C.; LANDMARK TITLE COMPANY as
Trustee; and HEALTH CARE PROPERTY
INVESTORS, INC., as Beneficiary,

Defendants.

ORDER OF IMMEDIATE
OCCUPANCY

Project No. F-0154
Parcel Nos. 1, 1:2E, 1:3E, 1:E
Affecting Tax ID No. 21-05-126-015

Civil No. 110906757

Judge Sandra Peuler

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, *including the "Stipulation & Joint Motion for Order of Immediate Occupancy"* and for good cause appearing,

IT IS HEREBY ORDERED:

Zm 5/11/2011

1. Plaintiff, Utah Department of Transportation ("UDOT"), is a public agency having the power of eminent domain and is entitled to condemn the property that is 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 occupancy of the following premises, *pendente lite*, and to do whatever work thereon required in furtherance of the project described in Plaintiff's Complaint, subject to the requirements of Paragraph 6 below:

The Subject Property is located in Salt Lake County, Utah and described as:

Parcel No.0154:1

A parcel of land in fee incident to the construction of Project No. F-0154(57)14, being part of an entire tract of property situate in the NE1/4NW1/4 of Section 5, T.2S., R.1W., S.L.B.&M. The boundaries of said parcel of land are described as follows:

Beginning at a point in the northerly boundary line of said entire tract in the southerly right of way line of 4100 South Street which is 495.00 feet S.89°53'25"W. along the section line and 53.00 feet S.00°06'35"E. and 32.64 feet S.89°53'25"W. from the North Quarter Corner of said Section 5, said point is approximately 51.19 feet perpendicularly distant southerly from the control line of said 4100 South Street of said project opposite engineer station 45+15.75, and running thence S.18°13'59"W. 25.08 feet to a line parallel with and 75.00 feet perpendicularly distant southerly from said control line opposite engineer station 45+07.85; thence S.89°52'30"W. 40.93 feet along said parallel line to a point opposite engineer station 44+66.92; thence N.14°17'47"W. 21.66 feet to a point 54.00 feet perpendicularly distant southerly from said control line opposite engineer station 44+61.62; thence N.85°58'02"W. 13.79 feet to a line parallel with and 53.00 feet perpendicularly distant southerly from said control line opposite

engineer station 44+47.86; thence S.89°52'30"W. 41.36 feet along said parallel line to a point opposite engineer station 44+06.50; thence S.00°07'30"E. 4.50 feet to a line parallel with and 57.50 feet perpendicularly distant southerly from said control line opposite engineer station 44+06.50; thence S.89°52'30"W. 12.00 feet along said parallel line to a point opposite engineer station 43+94.50; thence N.00°07'30"W. 4.50 feet to a line parallel with and 53.00 feet perpendicularly distant southerly from said control line opposite engineer station 43+94.50; thence S.89°52'30"W. 38.01 feet along said parallel line to a point opposite engineer station 43+56.49; thence S.38°36'55"W. 28.21 feet to a line parallel with and 75.00 feet perpendicularly distant southerly from said control line opposite engineer station 43+38.84; thence S.89°52'30"W. 50.36 feet along said parallel line to a point opposite engineer station 42+88.48; thence N.48°29'29"W. 6.02 feet to a line parallel with and 71.00 feet perpendicularly distant southerly from said control line opposite engineer station 42+83.98; thence S.89°52'30"W. 220.43 feet along said parallel line to a point opposite engineer station 40+63.55; thence N.87°05'13"W. 113.22 feet to a line parallel with and 65.00 feet perpendicularly distant southerly from said control line opposite engineer station 39+50.49; thence S.89°52'30"W. 60.29 feet along said parallel line to a point the easterly right of way and limited access line of the existing highway State Route 154 (Bangerter Highway) opposite engineer station 38+90.20, said point is also 91.70 feet perpendicularly distant easterly from the control line of Bangerter Highway of said project opposite engineer station 515+45.71; thence N.44°57'53"E. 19.79 feet along said easterly right of way and limited access line to said southerly right of way line; thence N.89°53'25"E. 61.54 feet along said southerly right of way line to the point of beginning.

The above described parcel of land contains 9,966 square feet in area or 0.229 acre, more or less.

(Note: All bearings in the above description equal highway bearings.)

Together with any and all abutter's rights of underlying fee to the center of the existing right-of-way appurtenant to this conveyance.

Parcel No.0154:1:E

A temporary easement, upon part of an entire tract of property, in the NE1/4NW1/4 of Section 5, T.2S., R.1W., S.L.B.&M., in Salt Lake County, Utah, to facilitate the construction of Project No. F-0154(57)14.

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

Order of Immediate Occupancy
Salt Lake County Civil No. 110906757
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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 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 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 of land are described as follows:

Beginning at the intersection of the southerly right of way line of 4100 South Street and the west line of Free Country Estates Subdivision (a subdivision filed in the Office of the Salt Lake County Recorder in Book 77 on Page 83) 495.00 feet S.89°53'25"W. along the section line and 53.00 feet S.00°06'35"E. from the North Quarter Corner of said Section 5, said point is also approximately 51.20 feet perpendicularly distant southerly from the control line of 4100 South Street of said project opposite engineer station 45+48.40, and running thence S.00°06'35"E. 7.20 feet along said west line of Free Country Estates Subdivision; thence S.89°52'30"W. 29.77 feet; thence S.18°13'59"W. 22.76 feet; thence S.89°52'30"W. 48.43 feet; thence N.14°17'47"W. 22.28 feet; thence S.89°52'30"W. 46.07 feet; thence S.00°07'30"E. 4.19 feet; thence S.89°52'30"W. 21.99 feet; thence N.00°07'30"W. 4.19 feet; thence S.89°52'30"W. 30.94 feet; thence S.38°36'55"W. 25.78 feet; thence S.00°07'30"E. 14.00 feet; thence S.89°52'30"W. 65.00 feet; thence N.00°07'30"W. 16.50 feet; thence S.89°52'30"W. 145.02 feet; thence S.00°07'30"E. 18.50 feet; thence S.89°52'30"W. 82.00 feet; thence N.00°07'30"W. 21.53 feet; thence S.89°49'51"W. 168.34 feet to a westerly corner of said entire tract in the easterly right of way and limited access line of the existing highway State Route 154 (Bangerter Highway); thence N.44°57'53"E. 11.47 feet along said easterly right of way and limited access line to a line parallel with said control line; thence N.89°52'30"E. 60.29 feet along said parallel line; thence S.87°05'13"E. 113.22 feet to a line parallel with said control line; thence N.89°52'30"E. 220.43 feet along said parallel line; thence S.48°29'29"E. 6.02 feet to a line parallel with said control line; thence N.89°52'30"E. 50.36 feet along said parallel line; thence N.38°36'55"E. 28.21 feet to a line parallel with said control line; thence N.89°52'30"E. 38.01 feet along said parallel line; thence S.00°07'30"E. 4.50 feet to a line parallel with said control line; thence N.89°52'30"E. 12.00 feet along said parallel

line; thence N.00°07'30"W. 4.50 feet to a line parallel with said control line; thence N.89°52'30"E. 41.36 feet along said parallel line; thence S.85°58'02"E. 13.79 feet; thence S.14°17'47"E. 21.66 feet to a line parallel with said control line; thence N.89°52'30"E. 40.93 feet along said parallel line; thence N.18°13'59"E. 25.08 feet to said southerly right of way line; thence N.89°53'25"E. 32.64 feet along said southerly right of way line to the point of beginning. The above described part of an entire tract of land contains 6,276 square feet in area or 0.144 acre, more or less.

Parcel No.0154:1:2E

A perpetual easement, upon part of an entire tract of property, in the NE1/4NW1/4 of Section 5, T.2S., R.1W., S.L.B.&M., in Salt Lake County, Utah, for the purpose of constructing and maintaining thereon public utilities and appurtenant parts thereof including, but not limited to ATMS fiber optic conduit, electrical service and distribution lines, culinary and irrigation water facilities; and highway appurtenances including, but not limited to slopes, street and signal lighting facilities, directional and traffic information signs to facilitate the construction of the existing highway State Route 154 known as Project No. F-0154(57)14.

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

Beginning at the northeast corner of said entire tract in the southerly right of way line of the existing 4100 South Street which corner is 495.00 feet S.89°53'25"W. and 53.00 feet S.00°06'35"E. from the North Quarter Corner of said Section 5, said corner is also approximately 51.20 feet perpendicularly distant southerly from the control line of said project opposite engineer station 45+48.40; and running thence S.00°06'35"E. 18.91 feet along the easterly boundary line of said entire tract; thence S.86°00'29"W. 39.90 feet; thence N.18°13'59"E. 22.77 feet to a point in said southerly right of way line which point is 51.19 feet perpendicularly distant southerly from said control line; thence N.89°53'25"E. 32.64 feet along said southerly right of way line to the point of beginning. The above described part of an entire tract of land contains 729 square feet or 0.017 acre in area, more or less.

(Note: All bearings in the above description equal highway bearings.)

The Owners, by consent of the Utah Department of Transportation, shall have the right to lessen but not to increase the vertical distance or grade of said cut and/or fill slopes. At no time shall the Owners, place, use or permit any equipment or material of any kind that exceeds twelve (12) feet in height, light any fires, place or store any flammable materials (other than agricultural crops), on or within the boundaries of the easement.

Parcel No.0154:1:3E

A perpetual easement, upon part of an entire tract of property, in the NE1/4NW1/4 of Section 5, T.2S., R.1W., S.L.B.&M., in Salt Lake County, Utah, for the purpose of constructing and maintaining thereon public utilities and appurtenant parts thereof including, but not limited to ATMS fiber optic conduit, electrical service and distribution lines, culinary and irrigation water facilities; and highway appurtenances including, but not limited to slopes, street and signal lighting facilities, directional and traffic information signs to facilitate the construction of the existing highway State Route 154 known as Project No. F-0154(57)14.

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

Beginning at a point which is 495.00 feet S.89°53'25"W. and 53.00 feet S.00°06'35"E. and 32.64 feet S.89°53'25"W. and 25.08 feet S.18°13'59"W. and 31.76 feet S.89°52'30"W. from the North Quarter Corner of said Section 5, said point is also approximately 75.00 feet perpendicularly distant southerly from the control line of said project opposite engineer station 44+76.10; and running thence S.86°00'29"W. 348.00 feet; thence N.88°42'56"W. 225.16 feet; thence N.84°20'31"W. 218.84 feet to the easterly right of way and limited access line of the existing highway State Route 154; thence N.00°04'40"W. 17.63 feet along said easterly right of way line to a northwest corner of said entire tract; thence N.44°57'53"E. 11.47 feet along said easterly right of way and limited access line to a line parallel with and 65.00 feet perpendicularly distant southerly from said control line opposite engineer station 38+90.20; thence N.89°52'30"E. 60.29 feet along said parallel line to a point opposite engineer station 39+50.49; thence S.87°05'13"E. 113.22 feet to a line parallel with and 71.00 feet perpendicularly distant southerly from said control line opposite engineer station 40+63.55; thence N.89°52'30"E. 220.43 feet along said parallel line to a point opposite engineer station 42+83.98; thence S.48°29'29"E. 6.02 feet to a line parallel with and 75.00 feet perpendicularly distant southerly from said control line opposite engineer station 42+88.48; thence N.89°52'30"E. 50.36 feet along said parallel line to a point opposite engineer station 43+38.84; thence N.38°36'55"E. 28.21 feet to a line parallel with and 53.00 feet perpendicularly distant southerly from said control line opposite engineer station 43+56.49; thence N.89°52'30"E. 38.01 feet along said parallel line to a point opposite engineer station 43+94.50; thence S.00°07'30"E. 4.50 feet to a line parallel with and 57.50 feet perpendicularly distant southerly from said control line opposite engineer station 43+94.50; thence N.89°52'30"E. 12.00 feet along said parallel line to a point opposite engineer station 44+06.50; thence N.00°07'30"W. 4.50 feet to a line parallel with and 53.00 feet perpendicularly distant southerly from said control line opposite engineer station 44+06.50; thence N.89°52'30"E. 41.36 feet along said parallel line to a point opposite engineer station 44+47.86; thence

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S.85°58'02"E. 13.79 feet to a point 54.00 feet perpendicularly distant southerly from said control line opposite engineer station 44+61.62; thence S.14°17'47"E. 21.66 feet to a line parallel with and 75.00 feet perpendicularly distant southerly from said control line opposite engineer station 44+66.92; thence N.89°52'30"E. 9.17 feet along said parallel line to the point of beginning. The above described part of an entire tract of land contains 13,933 square feet or 0.320 acre in area, more or less.

(Note: All bearings in the above description equal highway bearings.)

The Owners, by consent of the Utah Department of Transportation, shall have the right to lessen but not to increase the vertical distance or grade of said cut and/or fill slopes. At no time shall the Owners, place, use or permit any equipment or material of any kind that exceeds twelve (12) feet in height, light any fires, place or store any flammable materials (other than agricultural crops), on or within the boundaries of the easement.

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

(a) that UDOT's appraisal of the value of the premises sought to be condemned is \$227,000.00; and

(b) that UDOT requires speedy occupancy of said premises to avoid the waste of public resources associated with project interruptions and delay.

5. As a condition precedent to Plaintiff's occupancy under this Order, Plaintiff shall deposit the sum of \$227,000.00 with the Clerk of the Court for the purposes set forth in Utah Code Ann. § 78B-6-510, said amount being Plaintiff's full appraised value for purposes of obtaining occupancy.

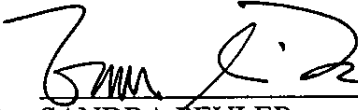
6. This Order is pursuant to and incorporates the further terms of the Stipulation and

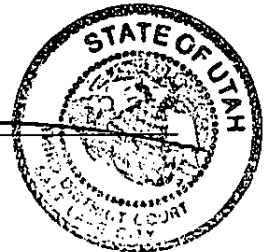
Joint Motion for Order of Immediate Occupancy entered into between UDOT and Defendants as filed with the Court.

7. Defendants may withdraw the deposited funds of \$227,000.00 pursuant to the stipulation and Utah Code Ann. § 78B-6-510.

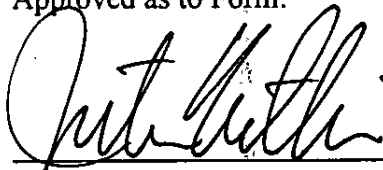
DATED this 4 day of May, 2011.

BY THE COURT:

(for)

SANDRA PEULER
District Court Judge



Approved as to Form:


JUSTIN P. MATKIN
Attorney for Defendants HCPI/Utah, LLC,
Boyer Deseret Springs, L.C., and The
Boyer Company

I CERTIFY THAT THIS IS A TRUE COPY
OF AN ORIGINAL DOCUMENT ON FILE
IN THE THIRD DISTRICT COURT, SALT
LAKE COUNTY, STATE OF UTAH.

DATE May 5, 2011
