

WHEN RECORDED, MAIL TO:  
Utah Transit Authority  
669 W. 200 South

Salt Lake City, UT 84101

ENT 121559:2018 PG 1 of 6

Jeffery Smith  
Utah County Recorder

2018 Dec 27 11:40 AM FEE 0.00 BY SM

RECORDED FOR National Title Agency of Utah, Inc.  
ELECTRONICALLY RECORDED



## Utah Transit Authority Right of Entry and Occupancy Agreement

Project No: S-0265(23)3 Parcel No.(s): 317D:2EC, 317D:EC

Pin No: 10266 Job/Proj No: 71663 Project Location: Provo/Orem Transportation Improvement Project

County of Property: UTAH Tax ID / Sidwell No: 22:015:0080

Property Address: 910 N 900 East PROVO UT, 84604

Owner's Address: 16B Journey #200, Aliso Viejo, CA, 92656

Owner's Home Phone: Owner's Work Phone: (801)633-3155

Owner / Grantor (s): NB Park Plaza Provo, LLC, NB Park Plaza Provo TIC 1, LLC, NB Park Plaza Provo TIC 2, LLC, NB Park Plaza Provo TIC 3, LLC, NB Park Plaza Provo TIC 4, LLC, NB Park Plaza Provo TIC 5, LLC, NB Park Plaza Provo TIC 6, LLC, NB Park Plaza Provo TI

Grantee: Utah Transit Authority (UTA)

### Acquiring Entity: Utah Transit Authority (UTA)

#### For the subject property described in the attached deed (Exhibit A).

This Right of Entry and Occupancy Agreement ("Agreement") is entered between NB Park Plaza Provo, LLC, NB Park Plaza Provo TIC 1, LLC, NB Park Plaza Provo TIC 2, LLC, NB Park Plaza Provo TIC 3, LLC, NB Park Plaza Provo TIC 4, LLC, NB Park Plaza Provo TIC 5, LLC, NB Park Plaza Provo TIC 6, LLC, NB Park Plaza Provo TI ("Property Owners") and Utah Transit Authority (UTA).

Property Owners hereby grant to UTA, its contractors, permittees, and assigns, including but not limited to, utilities and their contractors, the right to occupy and commence construction or other necessary activity on the property sought to be acquired/occupied with this Agreement, and to do whatever construction, relocation of utilities, and other work as may be required in furtherance of the state transportation project, located on the property described in attached Exhibit A. This Agreement is made in anticipation of a possible condemnation action by UTA and is intended to provide for the entry and occupancy of the property pending further negotiations or the filing and pursuit of condemnation proceedings and possible alternative informal proceedings as provided for in this Agreement. Property Owners understand that, by executing this Agreement, Property Owners have waived and abandoned all defenses to the acquisition of the property.

The sum of \$63,300.00 (the "Deposit") will be paid into escrow, a non-interest bearing account, at a title company for the benefit of Property Owners as consideration for entering into this Agreement. UTA will be responsible for the expenses of the escrow account. This amount paid into escrow shall be deducted from a final settlement, award of arbitration, or other determination of just compensation in an eminent domain action should one be pursued to acquire the property that is determined to be necessary for the project. The amount paid will be for the purposes of this Agreement only, and will not be admissible as evidence in any subsequent process used to establish the value of the property or the amount of compensation that may be due to the Property Owners. Property taxes will be the responsibility of the Property Owners until transfer of the deed(s) to UTA.

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 UTA to the Property Owners under this Agreement. UTA will have the right to approve the release of the Deposit from Escrow to Property Owners and to require a conveyance of the subject property from the Property Owners to UTA prior to the release. 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 Deposit should properly be paid to other third parties, then UTA will have the right to require that the third parties participate in the release of the Deposit or the Deposit will be applied to any remaining liens. In the event that UTA desires to obtain title insurance in connection with the release of the deposit, UTA will pay the premiums for the title coverage.

This Agreement is granted without prejudice to the rights of the Property Owners, pending any settlement, to contest the amount of compensation to be paid the Property Owners for the property described in Exhibit A. If

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 Grantee: Utah Transit Authority (UTA)

a satisfactory settlement can not be agreed upon, UTA will, upon notice from the Property Owners that the amount of compensation offered and/or other proposed settlement terms are not acceptable, or at its own election, proceed to commence and diligently prosecute a condemnation proceeding in the appropriate court for a judicial determination of such compensation. If requested to do so by the Property Owners, UTA will, prior to commencing a condemnation proceeding, enter into a mediation or arbitration procedure provided for in the Utah Code Annotated 78B-6-522 and 13-43-204 through the Office of the Property Rights Ombudsman.

If the Property Owner uses the property for a residence, business, or farming operation and is required to move as a result of UTA's acquisition of the property, the Property Owners may be entitled to relocation assistance and/or payments as a displaced person. The relocation assistance and payment are available as a matter of right and subject to federal and state law if the Property Owners are displaced by the acquisition of this property and are not conditional upon the Property Owners signing this Right of Entry and Occupancy Agreement.

The effective date of the Right Of Entry and Occupancy Agreement shall be the date this Agreement is executed by the Property Owners, as shown below, and that date shall be the date of value for fair market valuation purposes in the context of settlement negotiations, arbitration, or an eminent domain proceeding, should one be necessary, unless the Property Owners have been previously served with a summons in regard to this property acquisition or the parties have otherwise agreed in writing to a different date for purposes of valuation. It is understood that, according to state law, any additional compensation that is ordered to be paid to the Property Owners for the acquisition of the property will include interest at an annual rate of 8 % on any additional compensation that is determined to be payable to the Property Owners over and above that paid with this Agreement, calculated from the date of entry upon the property.

**Exhibits:**

*[Signatures and Acknowledgments to Follow Immediately]*

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Grantee: Utah Transit Authority (UTA)

SIGNATURE PAGE  
TO  
UTAH TRANSIT AUTHORITY  
RIGHT OF ENTRY AND OCCUPANCY AGREEMENT

DATED this 7 day of December, 2018

[Signature] Property Owner      [Signature] Property Owner  
[Signature] Property Owner      [Signature] Property Owner

STATE OF UTAH  
County of \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me  
\_\_\_\_\_ the signer(s) of the Agreement set forth above,  
who duly acknowledged to me that they executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

DATED this \_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_  
Senior Manager of Real Estate and Transit Oriented Development

STATE OF UTAH  
County of \_\_\_\_\_

On the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me  
\_\_\_\_\_ the signer(s) of this Agreement for UTA  
who duly acknowledged to me that they executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

*See attached  
California Notary  
Acknowledgment*

### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of ORANGE )

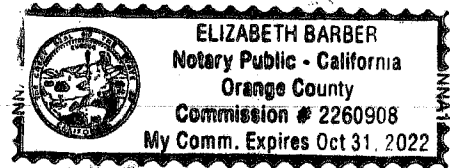
On DECEMBER 7, 2018 before me, ELIZABETH BARBER  
(insert name and title of the officer)

personally appeared BLAKE WETTENGEL  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Elizabeth Barber* (Seal)



Notary Public - California  
Orange County  
Commission #

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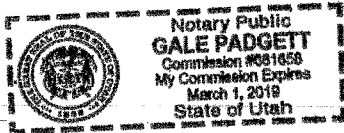
DATED this 12<sup>th</sup> day of December, 2018

Paul Drake  
 Senior Manager of Real Estate and Transit Oriented Development

STATE OF UTAH  
 County of Salt Lake

On the 12<sup>th</sup> day of December 2018, personally appeared before me

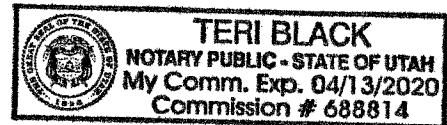
Paul Drake the signer(s) of the Agreement set forth above,  
 who duly acknowledged to me that they executed the same.



Gale Padgett  
 NOTARY PUBLIC

DATED this 17<sup>th</sup> day of December, 2018

Robert K. Biles  
 Vice President of Finance



STATE OF UTAH  
 County of Salt Lake

On the 17<sup>th</sup> day of December, 2018, personally appeared before me

Robert K. Biles the signer(s) of this Agreement for UTA  
 who duly acknowledged to me that they executed the same.

Teri Black  
 NOTARY PUBLIC

## Exhibit A

A parcel of land in fee, being part of an entire tract of property, situate in the Northwest quarter of the Northeast quarter and the Northeast quarter of the Northeast quarter of Section 6, Township 7 South, Range 3 East, Salt Lake Base and Meridian, for the construction of improvements incident to the Provo-Orem Transportation Improvement Project, known as project number S-0265(23)3.

Beginning at the Northwest corner of said entire tract, which point is on the Easterly right of way line of 900 East Street in Provo, Utah, which point is also 80.79 feet South  $00^{\circ}43'43''$  East along the section line and 1220.86 feet West and 272.65 feet South  $89^{\circ}58'13''$  West (274.91 feet South  $89^{\circ}58'20''$  West measured) from the Northeast corner of said Section 6; thence along the Northerly boundary line of said entire tract South  $89^{\circ}43'43''$  East (South  $89^{\circ}47'01''$  East measured) 8.23 feet to a point which is 46.16 feet perpendicularly distant Easterly from the control line of said project, opposite approximate Engineer Station 2705+46.85; thence South  $00^{\circ}40'20''$  East 171.08 feet to a point which is 46.15 feet perpendicularly distant Easterly from the control line of said project, opposite Engineer Station 2703+75.77; thence North  $89^{\circ}19'40''$  East 5.50 feet to a point which is 51.65 feet perpendicularly distant Easterly from the control line of said project, opposite Engineer Station 2703+75.77; thence South  $00^{\circ}40'20''$  East 8.00 feet to a point which is 51.65 feet perpendicularly distant Easterly from the control line of said project, opposite Engineer Station 2703+67.77; thence South  $89^{\circ}19'40''$  West 5.50 feet to a point which is 46.15 feet perpendicularly distant Easterly from the control line of said project, opposite Engineer Station 2703+67.77; thence South  $00^{\circ}40'20''$  East 64.22 feet, more or less, to the Southerly boundary line of said entire tract, which point is also 46.87 feet perpendicularly distant Easterly from the control line of said project, opposite approximate Engineer Station 2703+04.54; thence along said boundary line North  $89^{\circ}43'43''$  West (North  $89^{\circ}43'40''$  West measured) 9.19 feet to the Southwest corner of said entire tract and Easterly right of way line of said 900 East Street; thence along the Westerly boundary line of said entire tract and said right of way line the following two (2) courses: (1) North  $00^{\circ}27'02''$  East 47.92 feet; (2) North  $00^{\circ}35'07''$  West 196.58 feet (three (3) courses measured: (1) North  $00^{\circ}30'02''$  East 64.03 feet; (2) North  $00^{\circ}55'27''$  West 86.22 feet; (3) North  $00^{\circ}39'26''$  West 93.03 feet), more or less, to the point of beginning as shown on the official map of said project on file at the office of the Utah Department of Transportation.

(Note: Rotate above bearings counterclockwise  $00^{\circ}14'43''$  to equal project bearings.)