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

UTAH DEPARTMENT OF TRANSPORTATION,

Plaintiff,

vs.

LEX REX INVESTMENTS, LLC, a Utah limited liability company, CITIZENS BANK, a Tennessee Corporation; THE NEST FURNISHINGS, LLC, a Utah limited liability company, ABSOLUTE POWER & FITNESS, a Utah limited liability company; CARL'S SUPER SAVER STORE, a Utah limited liability company; WASATCH ROASTING COMPANY, LLC, a Utah limited liability company; and JOHN DOES 1 – 5,

Defendants.

**STIPULATED MOTION FOR FINAL
JUDGMENT OF CONDEMNATION AND
COMPENSATION**

Case Number 220905125

Judge Craig Hall

Tier 2

Plaintiff, the Utah Department of Transportation (“UDOT”) and Defendants Lex Rex Investments, LLC (“Lex Rex”) and The Nest Furnishings, LLC (“Nest”) (collectively “Defendants”) hereby stipulate and move the Court for entry of the Final Judgment of Condemnation and Compensation (“Final Judgment”), in accord with the terms, conditions, and actions set forth below:

1. Defendants Lex Rex and Nest, acknowledge that in this case UDOT has filed a Complaint in Eminent Domain seeking to acquire land for a road project and for a determination of what just compensation should be paid to Defendant Lex Rex and Nest whose land and improvements are being acquired by the taking and whose leasehold interest are affected by the taking, respectively. The property being acquired is located at approximately 3151 South Harrison Boulevard, Ogden, Utah 84403, more particularly described in Exhibit A to UDOT's Complaint in Eminent Domain and in paragraph 10 of the accompanying proposed Final Judgment (the "Subject Property").

2. Lex Rex and Nest are represented by counsel, and do not challenge the Court's jurisdiction over the property involved or the Court's personal jurisdiction over the Defendants for the purposes of this case or the venue of this action. UDOT's Complaint alleged the existence of "John Doe" Defendants possibly holding property interests. No John Doe defendants were identified during the discovery process, and none has been joined as a defendant.

3. The parties acknowledge that on or about February 25th, 2022, the Utah Transit Authority ("UTA") and Lex Rex entered into a Right of Entry and Occupancy Agreement ("Occupancy Agreement") so that UTA could begin construction on the Subject Property.

- a. Pursuant to the terms of the Occupancy Agreement, UTA deposited the sum of \$251,600.00 (the "Deposit") into an escrow account ("Escrow Account") with First American Title Company, 10808 S. River Front Parkway, South Jordan, Utah 84095.
- b. On or about May 17, 2022, the parties agreed to release \$33,993.00 from the Escrow Account to Powersource sign company to pay for the removal of a certain

sign on the Subject Property.

- c. On or about June 22, 2022, the parties agreed to release \$3,250.00 from the Escrow Account to Powersource sign company to pay for the removal of certain sign footings on the Subject Property.
- d. A total of \$214,357.00 remains in the Escrow Account.
- e. Pursuant to the terms of the Occupancy Agreement the Deposit amount of \$251,600.00 will be credited toward the Just Compensation amount as set forth herein.

4. The parties stipulate that the total just compensation amount for the Defendants' property interests and appurtenant rights to be acquired in this litigation and to be paid by UDOT shall be \$839,000 (the "Just Compensation Amount"). To achieve the full Just Compensation Amount, promptly after entry of judgment, UDOT shall cause the remaining balance of \$214,357.00 to be released from the Escrow Account to Lex Rex and issue a check in the sum of \$587,400.00 payable to the order of Lex Rex and delivered to the Defendants' counsel of record.

5. The Defendants warrant that, to the best of their knowledge, the Subject Property is not encumbered by any lien, mortgage, trust deed or other encumbrance. Defendants represent that they know of no other person or entity that may claim, or be entitled to receive, any portion of the condemnation proceeds (Just Compensation) to be paid in this matter other than the Defendant Lex Rex in this litigation. The Defendants represent that they have not transferred their rights to receive condemnation proceeds or encumbered any portion of the Subject Property since the date of the filing of the Complaint herein on or about November 4, 2022 (Dkt. #1) and agree to satisfy any encumbrances created after said date so that UDOT obtains good and

marketable title to the Subject Property.

6. UDOT has the right to condemn and acquire the Subject Property for a public use as authorized under Utah Code § 78B-6-501. UDOT has determined that widening or improving Harrison Boulevard which is the subject of this condemnation action, identified by UDOT as Project F-R199(235) (“the Project”), for which the Subject Property is being acquired, is public in nature and is designed in a manner most compatible with the greatest public good and the least private injury. In accordance with statutes relating to eminent domain, and the Constitution of Utah, UDOT has found and declared that the improvements to be constructed for the Project are necessary to and are in the public’s best interest.

7. In prior negotiations UDOT and the Defendants have resolved all claims, counterclaims, defenses and disputes that have been, or could have been, asserted between UDOT, UTA and the Defendants in this condemnation action and have agreed to settle all claims between UDOT, UTA and the Defendants in this matter without the necessity for any additional litigation.

8. This Stipulation sets forth the settlement terms agreed to by UDOT, UTA and the Defendants. This Stipulation together with the accompanying proposed Final Judgment and any attached exhibits, constitutes the entire agreement between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. The representations, warranties and obligations contained in this Stipulation shall survive transfer of the Subject Property by entry of judgment.

9. Upon the Defendants’ receipt of payment of the Just Compensation Amount described paragraph 4, Defendants for itself, and its members, principals and owners hereby

release(s) all claims to the Subject Property acquired herein, all claims for damages, all other claims for additional compensation, accumulating interest or damages as may be recoverable by law by reason of UDOT's acquisition of the Subject Property, and all other claims for damages proximately caused by or resulting from the facts and causes of action as alleged in the Complaint in this litigation or the conduct of the litigation. The Defendants voluntarily and irrevocably consent to entry of final judgment of condemnation providing for UDOT's acquisition of any right, appurtenant rights, title or interest the Defendants have, or may have had, as of the date of the filing of the Complaint in Eminent Domain, in the real property described in Plaintiff's Complaint and in the accompanying proposed final judgment of condemnation.

10. The Just Compensation Amount described in Paragraph 4, includes full, complete and just compensation for all interests, claims, counterclaims or causes of action, defenses, whether past or present, at law or in equity; all damages as may be recoverable by the Defendants in law or equity, due to UDOT's acquisition of the Subject Property, including, without limitation, claims for just compensation, additional compensation, accumulating interest, severance or statutory damages; indirect or consequential damages; any rents, losses, loss of profits or revenue; and any claims arising from UDOT's and UTA's negotiations prior to the commencement of litigation and the conduct of this condemnation action.

11. The Defendants consent to the form of the proposed Judgment of Condemnation and its filing together with this Stipulated Motion and that it may be submitted for entry immediately upon filing with the Court.

12. The parties to this Stipulation acknowledge that the terms herein are subject to

approval by the Utah Transit Authority Board of Trustees and concurrence of the Federal Transit Authority.

13. The undersigned parties agree that each shall bear their own respective costs and attorney fees.

DATED February 19th, 2025

DATED February 19th, 2025

MICHAEL BEST & FRIEDRICH LLP

DEREK E. BROWN
UTAH ATTORNEY GENERAL

/s/ Steven J. Joffe
Steven J. Joffe
Ashlee M. Burton
Attorneys for Defendants
Lex Rex Investments LLC &
The Nest Furnishings, LLC
(Electronically signed with permission)

/s/ Andrew R. Kolter
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