

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT
AUTHORIZING THE PURCHASE OF REAL PROPERTY FROM EDWARD AND
CAROL MARQUEZ FOR THE OGX BUS RAPID TRANSIT PROJECT
(Parcel 153)**

R2023-09-02

September 27, 2023

WHEREAS, Utah Transit Authority (the “Authority”) is a large public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Limited Purpose Local Government Entities – Special Districts Act and the Utah Public Transit District Act; and

WHEREAS, the Board of Trustees (the “Board”) has approved the project known as the Ogden-Weber State Bus Rapid Transit Transportation Project, UDOT PIN 15906, project no. F-R199(235), to design, construct and operate a Bus Rapid Transit (the “Project”) in Weber County, Utah; and

WHEREAS, the Authority entered into negotiation with Edward and Carol Marquez (“Seller”) for the acquisition of property located at approximately 3195 South Harrison Blvd., in Ogden, Utah, for Project, consisting of approximately 20,909 square feet (0.48 acres) (the “Property”) with Tax ID 04-016-0009; and

WHEREAS, the just compensation and administrative settlement for the Property is \$2,107,940.93 (see, Exhibit A); and

WHEREAS, the Authority entered into negotiation with 7-Eleven who holds a leasehold interest in Property (“Tenant”), and arrived at a fair and reasonable compensation and administrative settlement for the taking of Tenant’s interest in Property in the amount of \$370,000.00 (see, Exhibit B); and

WHEREAS, on November 3, 2020, the Federal Transit Administration provided its concurrence with proceeding to the condemnation of the Property; and

WHEREAS, the Authority’s staff and consultants have made diligent and reasonable efforts to acquire the Property through a settlement of all claims of just compensation to interested parties; and

WHEREAS, the Authority, Seller, and Tenant have negotiated and have reached a settlement for all interests in the Property (“Settlement”); and


WHEREAS, the Settlement is conditioned upon receiving FTA concurrence and the approval of the Board; and

WHEREAS, Board Policy No. 5.2(III)(A)(2) requires that, prior to acquiring property valued over One Million Dollars, the Board approve such action.


NOW, THEREFORE, BE IT RESOLVED by the Board of the Authority (the "Board"):

1. That the Board hereby approves the purchase of the Property and administrative settlement in the amount of \$2,107,940.93 as described in Exhibit A.
2. That the Board hereby approves the purchase of the Tenant's leasehold interest and administrative settlement in the amount of \$370,000.00 as described in Exhibit B.
3. That the Executive Director and his designee(s) are authorized to execute the attached contract and any closing statements, escrow forms and other documents and instruments, and take any additional actions as may be necessary or prudent to complete the purchase in accordance with the terms indicated herein.
4. That the Board hereby ratifies any and all actions previously taken by the Authority's management, staff, and legal counsel with regard to the purchase of the Property.
5. That the corporate seal be attached hereto.

Approved and adopted this 27th day of September 2023.

DocuSigned by:

 86E38485ACBE4D0...
 Carlton Christensen, Chair
 Board of Trustees

ATTEST:

DocuSigned by:

 8D8A6B67F3AA459...
 Secretary of the Authority

Approved as to form:

DocuSigned by:

 82323E2963D5460...
 UTA Legal Counsel



EXHIBIT A
(Purchase and Settlement Agreement)



RIGHT OF WAY CONTRACT FEE ACQUISITION

Project No:	MSP 185	Parcel No.(s):	Marquez
Project Location	Ogden-WSU BRT Project		
County of Property	Weber	Tax ID / Sidwell No:	04-016-0009
Property Address:	3195 Harrison Blvd., Ogden, UT 84403		
Owner's Address	PO BOX 515, CALIMESA CA 92320-0515		
Owner's Home Phone	951-809-3766, email marquez92320@frontier.com		
Owner/Grantor(s)	Edward P Marquez and Carol A. Marquez, husband and wife as joint tenants		
Grantee	Utah Transit Authority		

IN CONSIDERATION of the foregoing and other considerations hereinafter set forth, it is mutually agreed by the parties as follows:

The Grantor, Edward P. Marquez & WF Carol A. Marquez (“Grantor”), hereby agrees to convey and sell by Special Warranty Deed a parcel(s) of land known as parcel number(s) 04-016-0009, (“Marquez Property” or “Subject Property”) for transportation purposes. This contract is to be returned to: Gale Padgett (Consultant), Right of Way Agent c/o Utah Transit Authority (UTA), 669 W. 200 South, Salt Lake City, UT 84101.

1. Grantor will transfer property by Special Warranty Deed, free of all financial liens and encumbrances, but subject to recorded easements, the 7-Eleven Lease, and other non-financial liens and encumbrances of record.
2. Grantor agrees to transfer the Marquez Property free of all debris and any hazardous materials (including paint or other household products), except any hazardous materials, including without limitation, from the gasoline pumps, or which the parties discussed and were aware of, and that UTA hired a contractor to remove and remediate.
3. Grantor shall leave the property in the same condition it existed when this contract is signed by the parties hereto. No work, improvement, or alteration will be done to the property other than what is provided for in this Agreement. UTA agrees to secure the Marquez Property and the buildings thereon after 7-Eleven ceases active retail operations thereon, continuing through the date of closing on the sale of the Marquez Property pursuant to this Agreement, and UTA assumes the risk of loss, and will indemnify and hold harmless Grantor.
4. Grantor has provided to UTA the keys to the buildings located on the Marquez Property. UTA accepts the property in its condition as of the date this Agreement is executed by the parties hereto. Any materials used to secure the Marquez Property shall remain on the property until the close of escrow and Grantor will not have an obligation to remove them. The parties acknowledge that this sale will be part of a § 1031 Tax Exchange transaction involving Downstream Exchange, 909 E. Green St., Pasadena, CA, 91106, and UTA will cooperate in facilitating the §1031 Exchange.
5. All fixtures are to remain with the property including lighting, plumbing, heating, and air conditioning.
6. Grantor agrees to pay any and all taxes assessed against this property prorated to the date of closing.
7. UTA shall pay the Grantor and or other parties of interest for the real property in the deed(s) and/or easement(s) referenced above.
9. The Grantor(s) is aware that Utah Code Ann. Sect. 78B-6-520.3 provides that in certain circumstances, the seller of property which is being acquired for a particular public use, is entitled to receive an offer to repurchase the property at the same price that the seller received, before the property can be put to a different use. Grantor(s) waives any right grantor may have to repurchase the property being acquired herein and waives any rights Grantor(s) may have under Utah Code Ann. Sect. 78B-6-520.3.
10. Upon execution of this contract by the parties, Grantor grants UTA, its contractors, permittees, and assigns, including but not limited to, utilities and their contractors, the right to immediately occupy and commence construction or other necessary activity on the property acquired for the state transportation project.

RIGHT OF WAY CONTRACT			
FEE ACQUISITION			
Project No:	MSP 185	Parcel No.(s):	Marquez
Project Location	Ogden-WSU BRT Project		
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Property Address:	3195 Harrison Blvd., Ogden, UT 84403		
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Owner's Home Phone	951-809-3766, email marquez92320@frontier.com		
Owner/Grantor(s)	Edward P Marquez and Carol A. Marquez, husband and wife as joint tenants		
Grantee	Utah Transit Authority		

11. Parties agree that it is their intent that the Sale Property boundaries and easement boundaries close. In the event of any scrivener's errors in the deeds or survey, the parties shall cooperate in promptly executing a corrected instrument.

Leased Fee Total Selling Price \$2,070,000.00
Payment of Protective Rent (Per ROO): \$37,940.93
Interest on the Deposit and Rent (Per ROO) \$_____

TOTAL: \$_____.

Grantor's Initials

Grantor understands this agreement is subject to concurrence by the FHA and approval of the Board of Directors of the Utah Transit Authority. Grantor acknowledges and accepts the percent of ownership listed below (100%) and agrees that the total selling price to be received, (\$2,107,940.93, together with accrued interest on the deposit through the date of closing), corresponds with Grantor's ownership.

_____ This Contract may be signed in counterparts by use of counterpart signature pages, and each counterpart signature page shall constitute a part of this Contract as if all Grantors signed on the same page.

Percent

_____ 100%

 Grantor, Edward P. Marquez & WF Carol A. Marquez Date

UTA and Right of Way Agents:

 Gale Padgett (Consultant)/Acquisition Agent Date

 UTA UTA Manager of Property Administration Date


 UTA Project Manager Date

 UTA Chief of Service Director Date

 UTA Executive Director Date

_____ Grantor's Initials

Answered as to Form:

DocuSigned by:

56A03BC7C491482...

Tim Merrill
Assistant Attorney General

**RIGHT OF WAY CONTRACT
FEE ACQUISITION**

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 This Contract may be signed in counterparts by use of counterpart signature pages, and each counterpart signature page shall constitute a part of this Contract as if all Grantors signed on the same page.

EM

Percent:
100%

EM

Edward P. Marquez & *Carol A. Marquez* 8/14/23
 Grantor, Edward P. Marquez & WF Carol A. Marquez Date

UTA and Right of Way Agents:

 Gale Padgett (Consultant)/Acquisition Agent Date

 UTA UTA Manager of Property Administration Date

 UTA Project Manager Date

 UTA Chief of Service Director Date

 UTA Executive Director Date

Grantor's Initials

EXHIBIT B
(Tenant's Leasehold Interest and Administrative Settlement)

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of August 2023 by and between 7-ELEVEN, INC., a Texas corporation (“7-Eleven”), and the UTAH TRANSIT AUTHORITY, a large public transit district organized pursuant to Utah law (“UTA”):

RECITALS

WHEREAS, 7-Eleven is the tenant at 3185 Harrison Blvd., Ogden, Utah (the “Premises”) pursuant to a certain Lease Agreement dated October 11, 1985 and its amendments and extensions (collective, the “Lease”);

WHEREAS, 7-Eleven owns certain improvements, furniture, fixtures, and equipment on the Premises;

WHEREAS, UTA has acquired, or soon will acquire, the Premises in fee simple under threat of eminent domain under Utah Code § 78B-6-501 *et seq.*;

WHEREAS, 7-Eleven has agreed to close the Store #27074 (the “Store”) located on the Premises and UTA has agreed to pay 7-Eleven just compensation for the Store’s closure and for termination of the Lease under the terms of this Agreement; and

WHEREAS, 7-Eleven further desires to remove certain proprietary furniture, fixtures, and equipment (the “Proprietary FF&E”) in order that its confidential information, trademarked designs, and other proprietary interests in those items are properly protected;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, 7-Eleven and UTA agree as follows:

ARTICLE I. COMPENSATION

Section 1.1. **Effective Date.** The effective date of the Settlement Agreement will be the date upon which this Settlement Agreement is fully executed by the Parties (the “Effective Date”), at which time this Settlement Agreement will enter into full force and effect.

Section 1.2. **Payment.** Within thirty (30) calendar days from the Effective Date, UTA will pay to 7-Eleven Three Hundred Seventy Thousand Dollars and No Cents (\$370,000.00) (the “Compensation Amount”) as just compensation for the closure of the Store and termination of the Lease.

ARTICLE II. VACATION OF PREMISES

Section 2.1. **Vacation Date.** 7-Eleven will vacate the Premises by no later than September 1, 2023 (“Vacation Date”). 7-Eleven has already removed or discarded all Proprietary FF&E from the Premises, and UTA agrees to accept the Premises in its as is condition, including with the HVAC systems and cooling vaults remaining on the Premises. UTA waives and disclaims all right, title, or ownership of the Proprietary FF&E.

Section 2.2. **Right of Entry for Environmental Remediation.** 7-Eleven previously removed and disposed of all underground storage tanks (“UST”) from the Premises and performed all required environmental remediation of the UST site, under the Temporary Access Agreement dated February 24, 2021 (“Temporary Access Agreement”), which is incorporated herein. 7-Eleven obtained all government and regulatory approvals and provided copies of all permits and reports related to the closing, removal and disposal of the USTs to the UTA. 7-Eleven further repaved the UST site after the tank removal. UTA hereby agrees and reaffirms 7-Eleven’s right under the Temporary Access Agreement to periodically enter upon the Premises to inspect and eventually plug and abandon the monitoring wells identified by that agreement to the extent necessary to complete 7-Eleven’s regulatory remediation requirements.

ARTICLE III. TERMINATION, WAIVER AND RELEASE

Section 3.1. **Termination of Lease.** The Parties hereby agree that the Lease will terminate and no longer be in force or effect on the Vacation Date. 7-Eleven waives any and all relocation fees or costs.

Section 3.2. **Mutual Release.** In consideration of the mutual promises and covenants contained herunder or of the Parties, on behalf of themselves and their respective predecessors, successors, insurers, representatives, assigns, attorneys, present or former employees, officers, directors, shareholders, members, owners, partners, affiliates, parents and subsidiaries, both jointly and individually, hereby unconditionally, absolutely and forever releases, discharges, and covenants not to sue the other Parties or any of such other Parties’ predecessors, successors, representatives, assigns, attorneys, present or former employees, officers, directors, shareholders, members, owners, partners, affiliates, parents and subsidiaries, both jointly and individually, (individually and collectively, the “**Released Parties**”) with respect to and from any and all liabilities, actions, cause of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, obligations, attorneys’ fees, liens, expenses, contracts, controversies, agreements, promises, variances, trespasses, injuries, damages, judgments, executions, claims and demands of whatsoever kind and nature in law (whether civil, criminal, contract, tort or other) and/or in equity, whether known or unknown, liquidated or unliquidated, fixed or contingent, suspected or unsuspected, arising out of, under, or in connection with the Lease or the Premises or in connection with or arising out of any act, omission or occurrence whatsoever related to the Lease or the Premises or arising out of, under or in connection with any other dispute or matter prior to the date of this Agreement. This release shall not encompass any duties or obligations of the Parties set forth in this Agreement.

Section 3.3. **Scope of Releases.** The obligations and agreements of the Parties as set forth in this Agreement shall be the sole exception to the releases and waivers granted herein by

the Parties hereto, and it is the intention of the Parties that the releases and waivers of the Parties as set forth in this Agreement shall be interpreted as broadly as possible and shall be completely binding and enforceable at law. The Parties acknowledge that the releases and waivers provided for herein include all claims and/or costs, including but not limited to those they do not know or suspect exist, and hereby waive all rights, which may exist with regard to such claims and/or costs.

Section 3.4. **No Admissions.** The Parties hereto agree and acknowledge that this Agreement, each of the covenants of the Parties under this Agreement, and the performance of the Parties under this Agreement are not intended as, and shall not be construed as an admission by any Party of any liability in connection with any matter whatsoever, or as an admission of any fact or other matter whatsoever. The Parties hereto agree and acknowledge that this Agreement and the undertakings, obligations, and rights of each of the Parties hereto constitute a compromise of disputed claims and that the Parties hereto have entered into this Agreement to avoid the future expense, delay, and frustrations of further litigation.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

Section 4.1. **Representations and Warranties of 7-Eleven.** 7-Eleven hereby represents and warrants to UTA that 7-Eleven is the sole owner of the Proprietary FF&E on the Premises. 7-Eleven has all power and authority to enter into this Agreement.

Section 4.2. **Representations and Warranties of UTA.** UTA has all power and authority to enter into this Agreement.

ARTICLE V. ATTORNEY'S FEES AND COSTS

In the event there is a breach of this agreement by either Party, the prevailing Party is entitled to recover any and all reasonable attorney fees, litigation expenses, and costs incurred in pursuing all available legal remedies to enforce this Agreement.

ARTICLE VI. COUNSEL; COST AND FEES

The Parties acknowledge that they have been advised and represented by their respective attorneys with respect to the preparation and execution of this Settlement Agreement. Each Party will bear its own attorneys' fees and costs incurred in connection herewith.

ARTICLE VII. MISCELLANEOUS

Section 7.1. **No Assignment or Encumbrance.** Each Party represents, warrants, and covenants that no other person or entity has or may have any right or interest in any claims or obligations described in this Agreement, and that it has and will have the sole and exclusive right and authority to execute this Agreement and the waiver and release contained herein. Each Party also represents, warrants, and covenants that it has not and will not sell, assign, transfer, convey, pledge, hypothecate, or otherwise dispose of or encumber any claims, causes of action or other rights or obligations referred to in this Agreement in the foregoing waiver and release.

Section 7.2. **Waiver, Modification, Remedies, and Severability.** Any waiver or modification of any provision of this Agreement must be in writing and signed by the Party whose rights are being waived or whose rights or obligations are being modified. All remedies, rights, undertakings, obligations and agreements will be cumulative. Any term or provision of this Agreement that is invalid or unenforceable will be ineffective only to the extent of such inability or unenforceability, without rendering invalid or unenforceable the remaining terms and provisions of this Agreement.

Section 7.3. **Entire Agreement.** This Agreement contains the entire understanding and agreement of the Parties hereto and supersedes all contemporaneous and prior representations, understandings and agreements of the Parties, whether written or oral, relating to the subject matter hereof. This Agreement is subject to the concurrence of the Federal Transit Administration and the approval of the UTA Board of Trustees.

Section 7.4. **Survival.** All representations, warranties, covenants and obligations of the Parties under this Agreement will survive execution and delivery of this Agreement and are not waived, released, or affected hereby.

Section 7.5. **Choice of Law and Forum.** This Agreement will be governed by and construed in accordance with the laws of the State of Utah. The Parties agree that the jurisdiction and venue for any action to resolve disputes arising under or based upon this Agreement will be initiated and exclusively prosecuted in the federal or state courts of Utah. Notwithstanding Article V hereof, in legal proceedings instituted to enforce this Agreement, the Party who prevails in such proceedings will be entitled to the award of its reasonable attorneys' fees, litigation expenses, and costs incurred by it in executing and/or collecting any award or judgment, at all trial and appellate levels. This provision will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.


Section 7.6. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument, which will take effect when all Parties have signed and delivered counterparts to each other or to their respective legal counsel. Transmission by facsimile of any executed counterpart of this Agreement will be deemed to constitute due and sufficient delivery of such counterpart.

Section 7.7. **Taxes of Consideration Payment.** The Parties acknowledge and agree that the Parties make no representations or warranties concerning the tax consequences, if any, arising out of or relating to payment of the Compensation Amount made pursuant to this Agreement.

Section 7.8. **Confidentiality.** The Parties each agree to keep the terms of this Agreement confidential and to not disclose its terms to any other person or entity, except that disclosure may be made to: (a) the Parties' attorneys, financial advisors and tax consultants; (b) as required by an order of a court of competent jurisdiction; or (c) as required or requested by investors, regulators, governmental agencies or otherwise required by law. Further, the Parties agree that if either is asked about this matter, they will respond only that it has been resolved.

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7-ELEVEN, INC., a Texas Corporation



By:  (SEAL)
Print: David J. Colletti Jr.
Its: Sr. Vice President

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UTAH TRANSIT AUTHORITY

By: _____ **(SEAL)**

Print: _____

Its: _____

By: _____ **(SEAL)**

Print: _____

Its: _____

Approved as to Form:

DocuSigned by:
Tim Merrill
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Tim Merrill

Assistant Attorney General

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