POSSESSION AND USE AGREEMENT RM 2338

STATE OF TEXAS
COUNTY OF WILLIAMSON

WHEREAS, WAYPOINT WEST, LLC, hereinafter referred to as "GRANTOR", whether one or more, is the owner of that certain pieces, parcels or tracts of land in Williamson County, Texas, being more particularly described by metes and bounds in Exhibits "A-B" (Parcel 33 & 33E), which is attached hereto and made a part hereof; and

WHEREAS, WILLIAMSON COUNTY, TEXAS, AND PEDERNALES ELECTRIC COOPERATIVE "collectively GRANTEE", plan to acquire a fee simple interest in the tract of land described in Exhibit "A", and an electric easement interest in the tract(s) of land described in Exhibit "B", whether through contract and conveyance or through eminent domain proceedings; and

WHEREAS, the GRANTEE must have possession of said-described tract of land for the purposes described below,

Construction of the RM 2338 roadway improvements and related utility relocations (Project).

NOW THEREFORE, BE IT KNOWN:

That in consideration of the payment of THIRTY THREE THOUSAND THREE HUNDRED SEVENTY FIVE AND 00/100 Dollars (\$33,375.00), which amount represents 90% of the estimated compensation for the acquisition of the Property to be acquired and any damages to the remaining property, GRANTOR has GRANTED and CONVEYED and by these presents does GRANT and CONVEY unto the GRANTEE, its employees, agents and assigns an irrevocable right-of-entry, possession, and construction easement, with the right of exclusive possession over, upon, and across those tracts of land described in Exhibits "A-B".

GRANTOR warrants and represents by, through, and under the GRANTOR, but not otherwise, that the title to the Property is free and clear of all liens and encumbrances on the title to the Property, or that any necessary and proper releases or subordinations will be executed for the Property prior to or simultaneously with the first payment of funds being disbursed under this agreement. The GRANTOR further agrees to indemnify the GRANTEE from all unreleased or undisclosed liens, claims or encumbrances that are known to GRANTEE and that affect the Property.

It is expressly agreed, acknowledged, and understood that the consideration paid hereunder shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property interests described herein and shown in Exhibits "A-B".

It is expressly agreed, acknowledged, and understood that the easements, rights, and privileges herein granted are assignable and shall be used by the GRANTEE, its employees, agents, and assigns, for the purposes of entering upon the above-described property, before the closing of the contemplated real estate transaction or the acquisition of title through condemnation, and proceeding with surveying, site review and analysis, utility relocation, actual construction on the Project, and all manner of preparation and work attendant thereto. Utility relocation, if any, shall include, but not be limited to, the relocation of water and wastewater lines, electrical lines, cable television lines, telephone lines, gas lines, and their attendant facilities from the existing roadway right-of-way on the property described in Exhibits "A-B".

The GRANTEE, its employees, agents, and assigns shall have the full and exclusive right to control and use the above-described tracts, including the right to erect and maintain fencing and traffic and pedestrian control and devices and signs, the right to clear trees and vegetation, and the right to excavate, trench, fill, and grade the real property itself.

At no time during the possession of the property by GRANTEE for the purposes described herein shall GRANTOR be denied reasonable access and/or ingress to or egress from the remaining property.

The easement, rights, and privileges herein granted shall automatically terminate upon the contemplated closing of the above-described real estate transaction or the rendition of a final judgment in condemnation proceedings. However, this grant shall survive the termination of any purchase contract agreement and shall also survive any institution of condemnation proceedings.

The parties further agree as follows:

- 1. That by virtue of the granting of permission to the GRANTEE to take temporary possession of the Property in accordance with this Agreement, GRANTOR does not waive any legal rights or defenses under the Constitution of the United States, the Constitution and Statutes of the State of Texas or any other provisions of the law that GRANTOR may have in connection with the acquisition of any rights to the Property by the GRANTEE.
- 2. That this Right of Entry, Possession, and Construction Easement is irrevocable by GRANTOR but only valid until sixty (60) business days after the filing of a Special Commissioners' award in the Cause. Thereafter, continued possession, if at all, will be pursuant to a deposit of a Special Commissioners' award according to Texas law governing possession in a statutory eminent domain case.
- 3. The date of valuation for purposes of determining the value of the just compensation for the Property to be acquired shall be the date of a deposit of a Special Commissioners Award in any applicable condemnation suit for this acquisition.

- This Agreement shall be binding upon the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. Specifically, Grantee's heirs, devisees, executors, administrators, legal representatives, successors or assigns are bound by terms of this agreement which state that the consideration paid hereunder to Grantee shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property described herein, whether said Grantee is or is not the owner of said property, now or in the future.
 - 6. The easement, right, and privileges granted herein are exclusive, and GRANTOR covenants that it will not convey any other easement or conflicting rights within the area covered by this grant. This grant shall be binding upon legal representatives, successors, and assigns of GRANTOR for the term of this grant.

TO HAVE AND TO HOLD the possession of the above-described tracts of land for the purposes and subject to the limitations described above, and GRANTOR warrants that he knows of no persons or business entity owns a present possessory interest in the fee title to the above-described premises other than GRANTOR, and that there are no parties in possession of any portion of the referenced real property as lessees other than identified herein.

[signature page follows]

Executed this the <u>03</u> day of <u>October</u>, 2009.

GRANTOR:

WAYPOINT WEST, LLC

By: fy T

Address: 3802 Roble Grande Ca Georgeham, Tx 786-28

GRANTEE:

WILLIAMSON COUNTY, TEXAS

County Judge Dan A. Gattis Williamson County, Texas

ACKNOWLEDGMENT

STATE OF TEXAS. COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the 23th day of OCTOBER, 2009 by Lynn C Stout VB, in the capacity and for the purposes and consideration recited herein. WAY POINT WEST LLC

CLAUDIA MALDONADO MY COMMISSION EXPIRES November 30, 2010

Notary Public, State of Texas

Printed Name: CLAUDIA MALDONADO My Commission Expires: 11:30.2010

STATE OF TEXAS COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the ____ day of _______, 2009 by Dan A. Gattis, Williamson County Judge, in the capacity and for the purposes and consideration recited herein.

Notary Public, State of Texas Printed Name:_____ My Commission Expires:

After recording return to:

Don Childs Sheets & Crossfield, P.C. 309 E. Main St. Round Rock, Texas 78664