

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS

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Parcel No.: 8

COUNTY OF WILLIAMSON

Project: Seward Junction SE/CR266

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between WILLIAMSON COUNTY, TEXAS ("County"), and LAND UNLIMITED INC. (the "Grantor" whether one or more), grants to the County, their contractors, agents and all others deemed necessary by the County, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a portion of Seward Junction SE/CR 266 and related appurtenances and utility relocations (the "Roadway Construction Project"). The property subject to this Agreement is described more fully in field notes, plat map or other description (attached as "Exhibit A") and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the County which is set forth in Paragraph 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the County the right of entry and exclusive possession and use of the Property for the purpose of constructing a roadway, utility adjustments and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Roadway Construction Project. This Possession and Use Agreement will extend to the County, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the County in the future, and all others deemed necessary by the County for the purpose of the Roadway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the County will tender to the Grantor the sum of ONE HUNDRED FORTY-TWO EIGHT HUNDRED SEVENTEEN and 00/100 Dollars (\$142,817.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The County will be entitled to take possession and use of the Property upon tender of payment as set out herein, subject to the conditions in paragraph 14 below, if any. The parties agree that the sum tendered represents 90% of the County's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the County's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the County in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the County has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the County, the

Grantor will promptly refund the overpayment to the County.

3. The effective date of this Agreement will be the date on which payment pursuant to Paragraph 2 above was tendered to the Grantor by the County, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
4. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances except as disclosed to Grantee in that certain title commitment numbered 1609924-GT issued February 27, 2017 by Independence Title Company (Title Resources Guaranty Company), and that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the County from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
5. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the County in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date.
6. This Agreement is made with the understanding that the County will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and other interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the County, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), all as the Property exists on the Effective Date of this Agreement. The County's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. No beneficial project influence will impact the appraised value of the Property to be acquired. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
7. In the event the County institutes or has instituted eminent domain proceedings, the County will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the County until entry of judgment. Upon written request from Grantor, the parties shall work to schedule a special commissioners' hearing which is to occur within 90 days after the receipt of such request, and at a date and time otherwise mutually agreeable to the parties.
8. The purpose of this Agreement is to allow the County to proceed with its Roadway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the County's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Roadway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Roadway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the

Property, or that acquisition of the Property is not necessary for the public use.

9. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the County to take and use all other minerals and materials thereon, and thereunder.
10. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property until the Effective Date, including prorated taxes until the Effective Date for the year in which the County takes title to the Property.
11. Notwithstanding the acquisition of right of possession to the Property by the County in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the County acquires title to the Property either by negotiation, settlement, or final court judgment.
12. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
13. It is agreed the County will record this document.
14. Other conditions: County agrees that it shall not take possession of the Property for construction of the Roadway Construction Project prior to May 31, 2018 in order to allow Grantor time to remove any personal property items from the Property area.

At no time during the possession of the Property by County for the purposes described herein shall Grantor be denied reasonable access and/or ingress to or egress from the remainder of Grantor's land for its current uses, unless otherwise agreed to in writing in advance.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the County and its assigns forever, for the purposes and subject to the limitations set forth above.

[signature pages follow]

GRANTOR:

LAND UNLIMITED INC.

By: 

Name: KENNETH LEWIS

Its: PRESIDENT

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Williamson

This instrument was acknowledged before me on this the 30th day of April, 2018 by _____, in the capacity and for the purposes and consideration recited herein.





Notary Public, State of Texas

Printed Name: Gayline Hoermann

My Commission Expires: 8/22/21

COUNTY:

WILLIAMSON COUNTY, TEXAS

By: _____

Dan A. Gattis
County Judge

ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the ___ day of _____, 2018 by Dan A. Gattis, County Judge of Williamson County, Texas, in the capacity and for the purposes and consideration recited herein.

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

EXHIBIT "A"

0.5261-Ac.
Noah Smithwick Survey, A-590,
Williamson County, Texas

Job No. 5569-02-001
FN1792R2(gt)
Page 1 of 5

FIELD NOTES DESCRIPTION – PARCEL 8

DESCRIPTION OF 0.5261 ACRE (22,915 SQUARE FEET) OF LAND IN THE NOAH SMITHWICK SURVEY, ABSTRACT NO. 590, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF THAT CERTAIN CALLED 2.67 ACRE TRACT OF LAND DESCRIBED IN THE DEED TO LAND UNLIMITED, INC., OF RECORD IN DOCUMENT NO. 1998064566, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS; SAID 0.5261 ACRE AS SURVEYED BY BOWMAN CONSULTING GROUP, LTD. AND SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a calculated point, 72.81 feet right of Williamson County Road 266 Baseline Station 269+75.10, in the south right-of-way line of State Highway No. 29, a varying width right-of-way, same being the north line of the said 2.67 acre tract, at the intersection with the east right-of-way line of County Road 266, a varying width right-of-way, same being the east corner of that certain called 0.026 acre right-of-way dedication to Williamson County, Texas, of record in Document No. 2011009566, Official Public Records of Williamson County, Texas, for the northwest corner and **POINT OF BEGINNING** of the tract described herein, and from said calculated point, an iron rod with 1.5-inch aluminum cap stamped "TxDOT" found bears S 49° 11' 33" W, a distance of 0.14 feet;

THENCE S 72° 13' 55" E, with the south right-of-way line of State Highway 29, same being the north line of the said 2.67 acre tract, and with the north line of the tract described herein, a distance of 103.51 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" set, 168.62 feet right of County Road 266 Baseline Station 269+35.92, for the northeast corner of the tract described herein;

THENCE leaving the south right-of-way line of State Highway 29 and crossing the said 2.67 acre tract, with the proposed east right-of-way line of County Road 266, and with the east line of the tract described herein, the following two (2) courses and distances:

1. S 51° 38' 56" W, a distance of 87.46 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" set, 96.00 feet right of County Road 266 Baseline Station 268+87.17, for an angle point, and
2. S 04° 28' 41" E, a distance of 295.03 feet to a 1/2-inch iron rod with plastic cap stamped "BCG" set, 102.00 feet right of County Road 266 Baseline Station 265+91.98, in the south line of the said 2.67 acre tract, same being the north line of Lot 9, Twenty-Nine Ranch, a subdivision of record in Cabinet K, Slides 115-116, Plat Records of Williamson County, Texas, for the southeast corner of the tract described herein;

THENCE S 67° 28' 06" W, with the south line of the said 2.67 acre tract, same being the north line of Lot 9 of the said Twenty-Nine Ranch subdivision, and with the south line of the tract described herein, a distance of 40.80 feet to a calculated point, 63.21 feet right of County Road 266 Baseline Station 265+79.34, in the existing east right-of-way line of County Road 266, at the southwest corner of the said 2.67 acre tract, same being the northwest corner of Lot 9 of the said Twenty-Nine Ranch subdivision, for the southwest corner of the tract described herein, from which a 1/2-inch iron rod found bears N 08° 41' 56" W, a distance of 2.74 feet;

THENCE with the existing east right-of-way line of County Road 266 and with the west line of the tract described herein, the following two (2) courses and distances:

1. N 08° 41' 56" W, with the west line of the said 2.67 acre tract a distance of 365.35 feet to an iron rod with 1.5-inch aluminum cap stamped "TxDOT" found, 30.32 feet right of County Road 266 Baseline Station 269+43.85, at the south corner of the said 0.026 acre tract for an angle point, and

2. N 49° 11' 33" E, crossing the said 2.67 acre tract with the east line of the said 0.026 acre tract, a distance of 52.75 feet to the **POINT OF BEGINNING** and containing 0.5261 acre (22,915 square feet) of land, more or less.

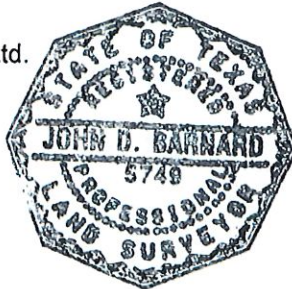
BEARING BASIS: Texas Coordinate System, Central Zone, NAD83, Grid.
BOWMAN WORD FILE: FN1792R2(gt)

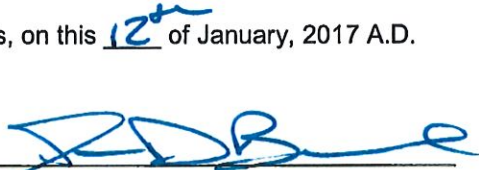
THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF TRAVIS §

That I, John D. Barnard, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during the months of January through June 2015 under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, on this 12th of January, 2017 A.D.

Bowman Consulting Group, Ltd.
Austin, Texas 78746



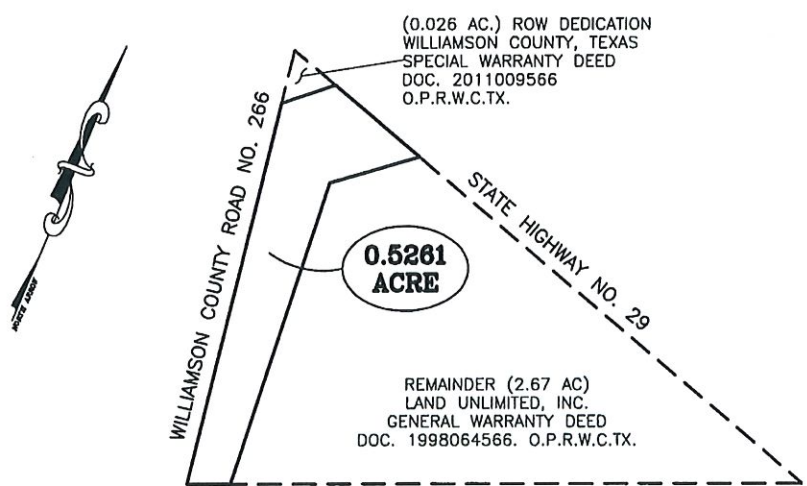


John D. Barnard
Registered Professional Land Surveyor
No. 5749 – State of Texas

FILE: P:\005569 - Seward Junction\005569-02-001 (SUR) - SE WA 1\Survey\Working\FN--Parcels\ROW_2017\SK1792R2(gt)_CR266-ROW_Parcel_8_Land_Unlimited.dwg

NOTES:

1. BEARING BASIS IS TEXAS COORDINATE SYSTEM, CENTRAL ZONE (4204), NAD83, GRID, BASED ON SURVEY TIES MADE TO CONTROL MONUMENTS SAM3, SAM4, SAM5 & SAM6 AS SHOWN ON CONTROL SHEETS FOR THE US 183: CR213 TO RIVA RIDGE DRIVE PROJECT (CSJ: 0151-04-063/064); LOWER COLORADO RIVER AUTHORITY (LCRA) CONTROL MONUMENTS AZF9 AND X622; AND TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) CONTROL MONUMENT N2463018.
2. DISTANCES SHOWN HEREON ARE BASED ON SURFACE MEASUREMENTS, TO CONVERT SURFACE DISTANCES TO GRID, MULTIPLY BY THE COMBINED SCALE FACTOR.
3. THE COMBINED SCALE FACTOR FOR THIS PROJECT IS 1.000115 (GRID TO SURFACE).
4. IMPROVEMENTS SHOWN HEREON ARE BASED ON AN ENGINEERING DESIGN SURVEY PERFORMED BY BOWMAN CONSULTING, DURING THE MONTHS OF JANUARY THROUGH JUNE, 2015.
5. COUNTY ROAD 259 STATIONS AND OFFSETS SHOWN HEREON ARE BASED ON THE THE PROJECT BASELINES (269011AL01.DGN), AS PROVIDED BY AGUIRRE & FIELDS, LP ON 08-26-2015.
6. THE ACREAGE CALCULATED AND SHOWN HEREON IS DERIVED FROM RECORD INFORMATION, AND IS FOR INFORMATIONAL PURPOSES ONLY. THIS DOES NOT IN ANY WAY REPRESENT A BOUNDARY SURVEY OF THE PARENT TRACT.
7. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE. THERE MAY BE EASEMENTS OR OTHER MATTERS OF RECORD NOT SHOWN.



WHOLE PROPERTY INSET
(NOT TO SCALE)

PROPOSED PARCEL ACQUISITION TABLE

RECORD PROPERTY AREA = 2.67 ACRES
DOC. 2011009566 ROW ACQUISITION AREA = 0.026 ACRE
PROPOSED ROW ACQUISITION AREA = 0.5261 ACRE
CALCULATED REMAINDER AREA = 2.1179 ACRES



SURVEYOR CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION AND THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

[Handwritten Signature]

1/12/2017
DATE

JOHN D. BARNARD
REGISTERED PROFESSIONAL LAND
SURVEYOR NO. 5749,
STATE OF TEXAS



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www.bowmanconsulting.com © Bowman Consulting Group, Ltd.

**EXHIBIT TO ACCOMPANY
FIELD NOTES DESCRIPTION
FN1792-R2**

TBPE Firm No. F-14309 | TBPLS Firm No. 101208-00