

POSSESSION AND USE AGREEMENT

STATE OF TEXAS

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§

COUNTY OF WILLIAMSON

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WHEREAS, HIGHLAND SIX TWENTY RESIDENTIAL LTD. and HIGHLAND 620 LAND INVESTMENT, LTD., hereinafter referred to as "GRANTOR", whether one or more, is the owner of that certain piece, parcel or tract of land in Williamson County, Texas, being more particularly described by metes and bounds in Exhibit "A", which is attached hereto and made a part hereof; and

WHEREAS, WILLIAMSON COUNTY, TEXAS, "GRANTEE", plans to acquire a fee simple interest in the tract(s) of land described in Exhibit "A", whether through agreement 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 proposed O'Connor Blvd..

NOW THEREFORE, BE IT KNOWN:

That in consideration of GRANTEE agreeing to extend the time for additional negotiations to acquire the Property required for the Project, 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 Exhibit "A".

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, and that any necessary and proper releases will be executed for the Property prior to any funds being disbursed under this agreement. The GRANTOR further agrees to indemnify the GRANTEE from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

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, 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 Exhibit "A".

The GRANTEE, its employees, agents, and assigns shall have the full 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.

The parties further agree as follows:

1. As additional consideration for the conveyance of the rights granted herein, GRANTEE additionally agrees that within 30 days after the issuance of a letter of substantial completion to the proposed O'Connor Blvd. roadway contractor in connection with that construction project, GRANTEE shall deposit the sum of FOUR HUNDRED FORTY FOUR THOUSAND TWO HUNDRED FIFTY DOLLARS (\$444,250.00) in an escrow account to be used according to terms and conditions of that certain Amendment to Developer Agreement between GRANTOR and GRANTEE dated _____ and providing for the construction of certain improvements, including the extension of Great Oaks Drive through the Highland Horizon Subdivision. Upon deposit of this amount by GRANTEE, GRANTOR shall execute a Donation Special Warranty Deed to GRANTEE for the Property subject to this Agreement.

2. If any fencing on the Property is required to be damaged or removed in order to carry out the activities allowed by this Agreement, then GRANTEE agrees to either (1) replace or relocate any affected fencing to the boundary of the proposed right of way with fence of like or better type; or (2) reimburse GRANTOR for the market value cost of relocating the fencing to the proposed right of way boundary within 30 days after submission to GRANTEE of invoices for such relocation work.

2. The easement, rights, and privileges herein granted shall automatically terminate upon the contemplated closing of the above-described real estate transaction and execution of the Donation Special Warranty Deed as described herein, or upon deposit of funds into the registry of the court in an eminent domain proceeding to acquire the Property.

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.

Executed this the ____ day of _____, 2011.

GRANTOR:

HIGHLAND SIX TWENTY RESIDENTIAL, LTD.,
a Texas limited partnership

By: HRI-GP No. 1, LLC
Its: General Partner


By: _____
David C. Bodenman
President

HIGHLAND 620 LAND INVESTMENT, LTD.,
a Texas limited partnership

By: HRI-GP No. 2, LLC
Its: General Partner

By: _____
David C. Bodenman
President

GRANTEE:
WILLIAMSON COUNTY, TEXAS

 03-27-11

County Judge Dan A. Gattis
Williamson County, Texas

ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the ____ day of _____, 2011
by David C. Bodenman, in the capacity and for the purposes and consideration recited herein.

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

**STATE OF TEXAS
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the ____ day of _____,
2011 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:

Sheets & Crossfield, P.C.
309 East Main St.
Round Rock, Texas 78664