

RIGHT OF ENTRY, POSSESSION AND USE AGREEMENT

STATE OF TEXAS §
COUNTY OF LUBBOCK §

This Right of Entry, Possession and Use Agreement (“Agreement”) is entered into by and between THE COUNTY OF LUBBOCK (hereinafter “LUBBOCK COUNTY” or “Condemnor”) and JANDEVELOPMENT, LLC (hereinafter “OWNER).

WHEREAS, LUBBOCK COUNTY and OWNER are parties in an Eminent Domain Proceeding, in Cause No. CC-2022-CD-0023, styled “*The County of Lubbock, Texas v. Jan Development, LLC and Lubbock National Bank Branch of Amarillo National Bank, Lienholder*” pending in the County Court at Law No. 3 in Lubbock County, Texas, a court of competent and proper jurisdiction, whereby LUBBOCK COUNTY seeks to condemn and acquire a permanent easement and right of way to construct, operate and maintain a public roadway and related improvements as more particularly described and depicted in LUBBOCK COUNTY’s Original Petition and Statement in Condemnation and exhibits thereto (the “Petition”). The Petition is attached hereto as Exhibit “AA”;

WHEREAS, OWNER is the owner in fee of the land upon, over, under, along, and across which LUBBOCK COUNTY's easement is sought, as described and depicted in Exhibits "A", "B", "C", and "D" to the Petition ("Easement Property");

WHEREAS, LUBBOCK COUNTY desires to have a right of entry upon and possession of the Easement Property for the purposes stated in the Petition so as to allow LUBBOCK COUNTY to construct and operate the planned improvements;

WHEREAS, OWNER is agreeable to permit LUBBOCK COUNTY, including its employees, agents, contractors, successors and assigns the right to enter upon and take possession of the Easement Property so that LUBBOCK COUNTY may use and possess the Easement Property to the same effect as if: (i) negotiations had been completed and conveyance of the easement and right-of-way to LUBBOCK COUNTY had been irrevocably made; or alternatively, (ii) a Special Commissioners' Hearing had been held in a condemnation proceeding and the award of Special Commissioners had been deposited in the registry of the Court;

WHEREAS, OWNER and LUBBOCK COUNTY agree that the sole remaining issue in dispute relating to the easement sought is the amount of compensation OWNER should receive in relation to the rights being acquired which the parties agree may be resolved through either: (i) further negotiation and agreement, or (ii) if no agreement is reached, the above-referenced lawsuit;

WHEREAS, OWNER and LUBBOCK COUNTY agree that the Entry Deposit, defined below, will be paid directly to the OWNER with a check made payable directly to the OWNER and that by paying the OWNER, OWNER specifically agrees that OWNER waives any and all of the OWNER's rights to challenge LUBBOCK COUNTY's right to take the easement and right-of-way or file any other jurisdictional challenges. LUBBOCK COUNTY recognizes and acknowledges that OWNER's consent to the entry upon and possession of the Easement Property by LUBBOCK COUNTY shall not be construed as a waiver of OWNER's right to seek additional compensation, if any, for the Easement Property; and

WHEREAS, it is necessary for LUBBOCK COUNTY to construct and reconstruct Woodrow Road (the "Road"), and to place any other related public improvements over, under, across, and upon the Easement Property, as more specifically stated in the Petition.

NOW, THEREFORE, in consideration of the above-stated Recitals, which are incorporated herein for all purposes, and LUBBOCK COUNTY'S agreement to pay monies to OWNER in the amount of Thirty Eight Thousand Two Hundred Forty Eight and No/100 Dollars (\$38,248.00) (the "Entry Deposit"), the receipt and sufficiency of which are hereby acknowledged and confessed, OWNER hereby consents and agrees to allow LUBBOCK COUNTY, and its employees, agents, contractors, successors and assigns the right to enter upon and take irrevocable possession of the Easement Property as follows:

1. The "Effective Date" of this Agreement shall be when this Agreement is signed by both parties (hereafter "Effective Date"). LUBBOCK COUNTY (hereinafter including its employees, agents, contractors, successors and assigns) shall have the right of entry upon and possession of the Easement Property on the Effective Date, and LUBBOCK COUNTY shall promptly pay the Entry Deposit to OWNER with a check made payable to OWNER. If a Special Commissioners' Hearing is held and the amount of the Special Commissioners' award exceeds the Entry Deposit, LUBBOCK COUNTY agrees to deposit the difference into the registry of the court within forty-five (45) days from the date of the Award of Special Commissioners. The Entry Deposit is made for the purpose of allowing LUBBOCK COUNTY the right to enter upon and take possession of the Easement

Property for the purposes stated in the Petition so as to allow LUBBOCK COUNTY to construct and operate the planned improvements.

2. OWNER agrees to permit LUBBOCK COUNTY to enter immediately upon the Easement Property and perform any and all activities necessary for carrying out the purposes of the easement as stated in the Petition;

3. LUBBOCK COUNTY shall have the right of ingress and egress on the Easement Property. LUBBOCK COUNTY will use reasonable efforts to avoid construction activities outside of the Easement Property during construction of the planned improvements.

4. It is further agreed that the granting of this Agreement shall not preclude or prejudice OWNER in any manner from contesting the consideration for such easement and any damages to OWNER's remaining property or from seeking additional compensation as allowed by law, in the event that the parties fail to agree on the terms and/or consideration for the easement, and the Eminent Domain proceedings are pursued through a commissioners' hearing and/or an appeal and trial de novo. Further, this Agreement does not preclude or prohibit OWNER from pursuing and seeking any damages allowed by law caused by LUBBOCK COUNTY to OWNER'S property as a result of LUBBOCK COUNTY'S activities on the OWNER's property.

5. **OWNER HEREBY EXPRESSLY WAIVES ANY RIGHT TO CHALLENGE, CONTEST OR OBJECT TO LUBBOCK COUNTY'S RIGHT TO TAKE THE EASEMENT PROPERTY SOUGHT IN THE CONDEMNATION CASE OR TO ACQUIRE THE RIGHTS INCLUDED IN THE EASEMENTS ATTACHED HERETO, AND SUCH WAIVERS SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

6. OWNER and LUBBOCK COUNTY agree to and hereby designate the Effective Date as the date of taking for all purposes, including the determination of just compensation owed to OWNER.

7. If LUBBOCK COUNTY and OWNER are unable to agree on the amount of adequate compensation for the acquisition of the Easements and damages to the remainder, if any, prior to a Special Commissioners' hearing, LUBBOCK COUNTY and OWNER agree to work together in the setting of said Special Commissioners' hearing. In the event that the parties are unable to agree within twenty (20) days of the Effective Date on a date for such hearing, either party may then request that a Special Commissioners' hearing be set and convened, provided that such setting requested shall not be earlier than thirty (30) days from the Effective Date of this agreement.

8. LUBBOCK COUNTY's right of entry upon Easement Property is limited to carrying out the intent of this Agreement.

9. OWNER and LUBBOCK COUNTY agree that if any portion of this Agreement is deemed to be illegal, invalid or unenforceable, such illegal, invalid or unenforceable provision shall not affect the legality, validity or enforceability of the remainder of this Agreement.

10. OWNER and LUBBOCK COUNTY agree that Texas law governs this Agreement and all obligations of the parties are performable in Lubbock County, Texas.

11. This Agreement shall continue from the Effective Date defined in Paragraph 1, above and terminate upon the earlier of the following two events:

- (a) The execution and delivery of an easement and right of way by OWNER to LUBBOCK COUNTY conveying the easement rights sought in the condemnation and identified in Exhibit "AA", attached hereto, or an alternative easement that is acceptable to LUBBOCK COUNTY; or,
- (b) Upon the conclusion of a Special Commissioners' hearing and subsequent deposit of the monies awarded by the Special Commissioners, pursuant to Texas Property Code §21.021(a)(1), with a credit to LUBBOCK COUNTY for the Entry Deposit already paid to OWNER, and further compliance with the obligations of Texas Property Code §21.021, this Agreement shall terminate and all rights, obligations and privileges of possession and use shall be governed by LUBBOCK COUNTY'S condemnation pleadings. It is further agreed that LUBBOCK COUNTY shall comply with its obligations under Texas Property Code §21.021 and pay any and all sums which exceed the Entry Deposit, make deposits or post bonds within forty-five (45) days from the date that the Award by Special Commissioners is filed with the Court in this condemnation case. It is expressly agreed that this Agreement may be presented to the trial court as evidence that LUBBOCK COUNTY has complied with Texas Property Code §21.021(a)(1) by the tender and payment of the Entry Deposit described above. Upon Final Judgment or upon the execution of a final easement between the parties, the rights defined in said judgment

or easement will be the final, sole and exclusive rights acquired by LUBBOCK COUNTY.

12. Nothing in the Agreement is intended to limit any rights, including rights of ingress and egress, which LUBBOCK COUNTY may have pursuant to any existing easement it owns burdening any property owned by OWNER.

13. This Agreement runs with the land and will extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties; however, LUBBOCK COUNTY and OWNER agree that only a memorandum of this Agreement that LUBBOCK COUNTY drafts may be filed of record in the real property records of Lubbock County.

14. Time is of the essence in this Agreement.

EXECUTED the 14th day of September, 2022, to be effective as set forth above.

OWNER: JAN DEVELOPMENT, LLC

By: _____

Title: _____


Managers

Curtis Parrish
Lubbock County Judge

Terence Kovar, Commissioner, Pct. 1

Jason Corley, Commissioner, Pct. 2

Gilbert A. Flores, Commissioner, Pct. 3

Chad Seay, Commissioner, Pct. 4

ATTEST:

Kelly Pinion, County Clerk