

WHEN RECORDED, RETURN TO:
Skool Days Child Care Center
12956 South 2700 West
Riverton, Utah 84065

9948800
12/21/2006 3:52:00 PM \$24.00
Book - 9398 Pg - 5151-5156 By: eCAST
Gary W. Ott Recorder
Recorder, Salt Lake County, UT
BONNEVILLE SUPERIOR TITLE
BY: eCASH, DEPUTY, EE & P
gp.

EASEMENT AND MAINTENANCE AGREEMENT

This Easement and Maintenance Agreement is made and executed by and between CavRad Properties, LLC, a Utah Limited Liability Company, whose address is 12956 South 2700 West, Riverton, Utah 84065, hereinafter referred to as "CavRad Properties") and Blue Stakes of Utah Utility Notification Center, Inc. a Utah Corporation, whose address is 148 East 13200 South, Draper, Utah 84020 (hereinafter referred to as "Blue Stakes").

WITNESSETH:

WHEREAS, CavRad Properties, is the owner of real property located in Salt Lake County, State of Utah more particularly described as "Exhibit A" attached hereinafter referred to as "CavRad Properties property"; and

WHEREAS, Blue Stakes, is the owner of real property located in Salt Lake County, State of Utah more particularly described as "Exhibit B" attached hereinafter referred to "Blue Stakes property; and

WHEREAS, the parties are the Owners of adjacent Common Driveways depicted and described in "Exhibit C" attached hereto; and

WHEREAS, the parties desire to create and establish an easement over and across the Common Driveways depicted and described in "Exhibit C" and provide for the continued operation, repair, maintenance and replacement of improvements to the said driveway.

NOW, THEREFORE, in consideration of the hereinabove set forth premises, the herein after set forth mutual terms, conditions, agreements and covenants and other good and valuable considerations, the parties agree as follows:

- 1) **Definitions** - The following terms used in this agreement shall have the following meanings:
 - a) "Common Driveway" the section of real property described in "Exhibit C" attached hereto,
 - b) "Owners" mean CavRad Properties and Blue Stakes
- 2) **Easements** - The parties hereby grant, convey and create non-exclusive, perpetual easements over and across the Common Driveway for the following uses and purposes and subject to the following terms and conditions.
 - a) Ingress and egress for pedestrian and vehicular traffic over, through and across such portions of the Common Driveway as may be from time to time paved and intended for such purposes.
 - b) Right of entry and access for the purpose of performing any repair, maintenance or replacement of improvements to the Common Driveway and for the purpose of exercising the easement rights established herein.
 - c) No alterations to the existing improvements to the Common Driveway shall be made without the prior written consent of the parties hereto, except for required maintenance, repair, replacement and initial construction of the improvements.
 - d) The easement area shall be kept open and unobstructed for the benefit of, and may be used by, the Owners, its successors, assigns, invitees and licensees. No structure, planting or other material, which may interfere with the use and purpose of the easement, shall be placed or permitted to remain within the Common Driveway.
 - e) No Owner shall grant any easement to any party for the use of any portion of the Common Driveway without the consent and written agreement between Owners.
- 3) **Common Driveway Expenses** - All operation, maintenance, repair and replacement of improvements to the Common Driveway, including the repair, maintenance and replacement of landscaping, sidewalks, paved surfaces, irrigation, common signage, lighting, drainage facilities and other improvements to the Common Driveway and the operational costs shall be the sole responsibility of the Owners for any expenses incurred on the portion of property Owned by the Owners. Any repairs which are deemed to be universal, and equal across both portions of property, the expense for which, shall each be responsible for one-half (1/2) of all costs and expenses incurred in connection with such, maintenance, replacement and repair.
- 4) **Insurance** - Owners shall obtain and maintain public liability insurance in an amount not less than \$1,000,000.00 for personal injury and \$50,000 for property damage, to cover the liability of Owners for any damage or injury occurring on the Common Driveway.
- 5) **Indemnity/Negligence**. Each party hereby indemnifies the other party and agrees to save and hold the other Party harmless from and against all actions, claims, damages, demands, expenses (including without limitation reasonable attorneys' fees), judgments, liens and liabilities in connection with damage, injury or loss to person or property resulting, occurring or arising as a result of the negligence, intentional misconduct or carelessness of Owners or by that of its employees or by that of its members or its members' tenants, guests, invitees or employees to the extent that such expense is not covered by the proceeds of any insurance carried by the Owners.
- 6) **Approvals and Dispute Resolution** - All operations, maintenance, repairs, replacements and improvements under this agreement shall be based upon the mutual approval and consent of the Owners or by binding arbitration if the Owners are unable to mutually agree on any matter relating to such operation, maintenance, repair, replacement or improvement. If the Owners are unable to agree on the requirement for, or manner of performing, any operation, maintenance, repair, replacement or improvement, the parties shall attempt to mutually agree upon a third party to arbitrate any such dispute. Any decision by the arbitrator shall be binding on the Owners. In the event the Owners are unable to mutually agree on the selection of a single arbitrator, each Owner shall appoint a civil engineer licensed to practice in the State of Utah to serve as arbitrators. Such appointment shall be made within fifteen (15) days after written notice by either Owner of the election to proceed with arbitration by a panel of arbitrators. The two (2) civil engineers appointed by the Owners shall appoint a third civil engineer, and the three (3) civil engineers shall constitute the panel of arbitrators. Any decision by a majority of the three (3) civil engineers shall be binding on the Owners. The Owners shall share the cost of any arbitration equally.
- 7) **Default** - In the event either Owner fails to contribute its prorata share of costs and expenses required to be paid under this agreement, the other Owner may, but shall not be obligated to, pay all of such costs and expenses and recover from the defaulting Owner such Owner's prorata share, together with interest at the highest rate allowed by law or eighteen percent (18%) per annum if no maximum interest rate is applicable. In the event of any default under this agreement, the non-defaulting party shall have the right to proceed in law or in equity, including the right to specific performance, to enforce its rights under this agreement.
- 8) **No Waiver** - No delay or omission of any party in the exercise of any right accruing under any default of any other party shall impair any such right or be construed to be a waiver thereof. A waiver by any party of a breach or a default of any of the terms and conditions of this Easement by any other party shall not be construed to be a waiver of any subsequent breach or default of the same or any other provisions hereof. Except as otherwise herein provided. No remedy provided in this Easement shall be

exclusive, but each shall be cumulative with all other remedies herein and at law or in equity and may be exercised at one time or at different times.

- 9) Limitation of Remedies - It is expressly agreed that no breach of the provisions of this instrument shall entitle any party to cancel, rescind or otherwise terminate this Easement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Easement.
- 10) Amendment - Provisions of this Easement may be abrogated, modified, rescinded, terminated or amended in whole or in part only by a written instrument, in recordable form, executed by the then fee simple owner(s) of the CavRad property and the fee simple owner(s) of the Blue Stakes property, and duly recorded in the office of the County Recorder of Salt Lake County, State of Utah. In no event shall the consent or approval of any tenant, licensee, concessionaire, customer, employee or business invitee be required with respect to any abrogation, modification, rescission, termination or amendment of this Easement.
- 11) Binding Effect - The terms, conditions, covenants and restrictions set forth in this agreement shall be deemed covenants running with the land, and the Owners shall be bound by all of the provisions set forth herein. This agreement shall be binding on and inure to the benefit of the Owners and their respective future grantees, successors and assigns.
- 12) Transfer of Ownership
 - a) In the event of a bona fide sale, assignment, or transfer of ownership by either Party of its property, such party shall thereafter have no liability for the agreements, conditions, covenants, and provisions of this Easement on the part of such party to be observed or performed thereafter. All provisions of this Agreement, including the benefits and burdens shall, however, run with the land and shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have made and entered into this Easement

Heidi Radeke
 CavRad Properties, LLC
 By Heidi Radeke, Member

Date 12/21/06

 Blue Stakes of Utah Utility Notification Center, Inc.
 By Vaughn W. Shosted, President

Date _____

On this 21st day of DECEMBER, 2006, before me, Kristina L Nelson, a Notary Public in and for the County of SALT LAKE, State of UTAH, duly commissioned and sworn, personally appeared before me, Heidi Radeke, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same within his/her authorized capacities and as authorized agent of CavRad Properties LLC

WITNESS my hand and official seal.

Kristina L Nelson
 Notary Public



On this _____ day of DECEMBER, 2006, before me, _____, a Notary Public in and for the County of SALT LAKE, State of UTAH, duly commissioned and sworn, personally appeared before me, _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same within his/her authorized capacities and as authorized agent of CavRad Properties, LLC.

WITNESS my hand and official seal.

 Notary Public

exclusive, but each shall be cumulative with all other remedies herein and at law or in equity and may be exercised at one time or at different times.

- 9) **Limitation of Remedies** - It is expressly agreed that no breach of the provisions of this instrument shall entitle any party to cancel, rescind or otherwise terminate this Easement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Easement.
- 10) **Amendment** - Provisions of this Easement may be abrogated, modified, rescinded, terminated or amended in whole or in part only by a written instrument, in recordable form, executed by the then fee simple owner(s) of the CavRad property and the fee simple owner(s) of the Blue Stakes property, and duly recorded in the office of the County Recorder of Salt Lake County, State of Utah. In no event shall the consent or approval of any tenant, licensee, concessionaire, customer, employee or business invitee be required with respect to any abrogation, modification, rescission, termination or amendment of this Easement.
- 11) **Binding Effect** - The terms, conditions, covenants and restrictions set forth in this agreement shall be deemed covenants running with the land, and the Owners shall be bound by all of the provisions set forth herein. This agreement shall be binding on and inure to the benefit of the Owners and their respective future grantees, successors and assigns.
- 12) **Transfer of Ownership**
 - a) In the event of a bona fide sale, assignment, or transfer of ownership by either Party of its property, such party shall thereafter have no liability for the agreements, conditions, covenants, and provisions of this Easement on the part of such party to be observed or performed thereafter. All provisions of this Agreement, including the benefits and burdens shall, however, run with the land and shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have made and entered into this Easement

Heidi Radeke
CavRad Properties, LLC

Date 12/21/06

By Heidi Radeke, Member

Vaughn W. Shosted
Blue Stakes of Utah Utility Notification Center, Inc.

Date 12/21/06

By Vaughn W. Shosted, President

On this 21 day of DECEMBER, 2006, before me, Melanie Hickman Notary Public in and for the County of SALT LAKE, State of UTAH, duly commissioned and sworn, personally appeared before me, Vaughn W. Shosted, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same within his/her authorized capacities and as authorized agent of KNP Construction, Inc.

WITNESS my hand and official seal.

Melanie Hickman
Notary Public



On this _____ day of DECEMBER, 2006, before me, _____, a Notary Public in and for the County of SALT LAKE, State of UTAH, duly commissioned and sworn, personally appeared before me, _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same within his/her authorized capacities and as authorized agent of CavRad Properties, LLC.

WITNESS my hand and official seal.

Notary Public

RECORDATION REQUESTED BY:

ZIONS FIRST NATIONAL BANK
REAL ESTATE CONSTRUCTION
ONE SOUTH MAIN, SUITE 470
SALT LAKE CITY, UT 84111

WHEN RECORDED MAIL TO:

ZIONS FIRST NATIONAL BANK
REAL ESTATE CONSTRUCTION
ONE SOUTH MAIN, SUITE 470
SALT LAKE CITY, UT 84111

SEND TAX NOTICES TO:

ZIONS FIRST NATIONAL BANK
REAL ESTATE CONSTRUCTION
ONE SOUTH MAIN, SUITE 470
SALT LAKE CITY, UT 84111

Exhibit A

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY



0000000000002-001034012132006

DEED OF TRUST AND FIXTURE FILING

THIS DEED OF TRUST is dated December 13, 2006, among CAVRAD PROPERTIES, LLC, a Utah limited liability company; and MARK H. CARVER, whose address is 12958 SOUTH 2700 WEST, RIVERTON, UT 84065 ("Trustor"); ZIONS FIRST NATIONAL BANK, whose address is REAL ESTATE CONSTRUCTION, ONE SOUTH MAIN, SUITE 470, SALT LAKE CITY, UT 84111 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and ZIONS FIRST NATIONAL BANK, whose address is ONE SOUTH MAIN STREET, SUITE 470, SALT LAKE CITY, UT 84111 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in SALT LAKE County, State of Utah:

LOT 2, SHERM MARGETTS COMMERCIAL SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER

The Real Property or its address is commonly known as 146 EAST 13180 SOUTH, DRAPER, UT 84020. The Real Property tax identification number is 28-31-301-039.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Trustor to Lender, or any one or more of them, as well as all claims by Lender against Trustor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Trustor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF TRUSTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND LENDER OF EVEN DATE HERewith. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2)

EXHIBIT B

Lot 1:

Beginning at a point on the South right-of-way line of 13180 South Street, said point being South 00°10'43" East along the section line 1251.30 feet and South 89°53'55" East 1193.05 feet and South 00°10'43" East 30.00 feet from the West quarter corner of Section 31, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence along said South right-of-way line South 89°53'55" East 166.37; thence South 45°00'46" East 15.59 feet to a point on the Westerly right-of-way line of 150 East Street; thence along said right-of-way line South 00°09'12" East 83.32 feet to a point on a 610.15 foot radius curve to the left (center bears North 89°50'48" East with an interior angle of 8°22'07"); thence along said right-of-way and said curve 89.12 feet to a fence line; thence North 89°59'55" West along said fence line 184.67 feet; thence North 00°06'00" East 183.41 feet to the point of beginning.

Contains 32,708 square feet or 0.75 acre.

Together with a right-of-way/easement for utilities and drainage over and across the South 20 feet of the following described land:

Beginning at a point which is South 00°10'43" East along the section line 1251.30 feet (also North 00°10'43" West 1419.47 feet from the Southwest corner) and South 89°53'55" East 181.12 feet (said point is also South 00°10'43" East 157.36 feet from a Utah State right-of-way brass) from the West quarter corner of Section 31, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 89°53'55" East 612.44 feet; thence South 00°10'43" East 214.34 feet to a fence; thence along said fence South 89°56' West 278.27 feet; thence North 00°10'43" West 214.09 feet to the point of beginning.

Lot 2:

Beginning at a point on the South right-of-way line of 13180 South Street, said point being South 00°10'43" East along the section line 1251.30 feet and South 89°53'55" East 1017.05 feet and South 00°10'43" East 30.00 feet from the West quarter corner of Section 31, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence along said South right-of-way line South 89°53'55" East 176.00 feet; thence South 00°06'00" West 183.41 feet to a fence line; thence North 89°59'55" West along said fence line 176.00 feet; thence North 00°06'00" East 183.72 feet to the point of beginning.

Contains 32,307 square feet or 0.74 acre.

Together with a right-of-way/easement for utilities and drainage over and across the South 20 feet of the following described land:

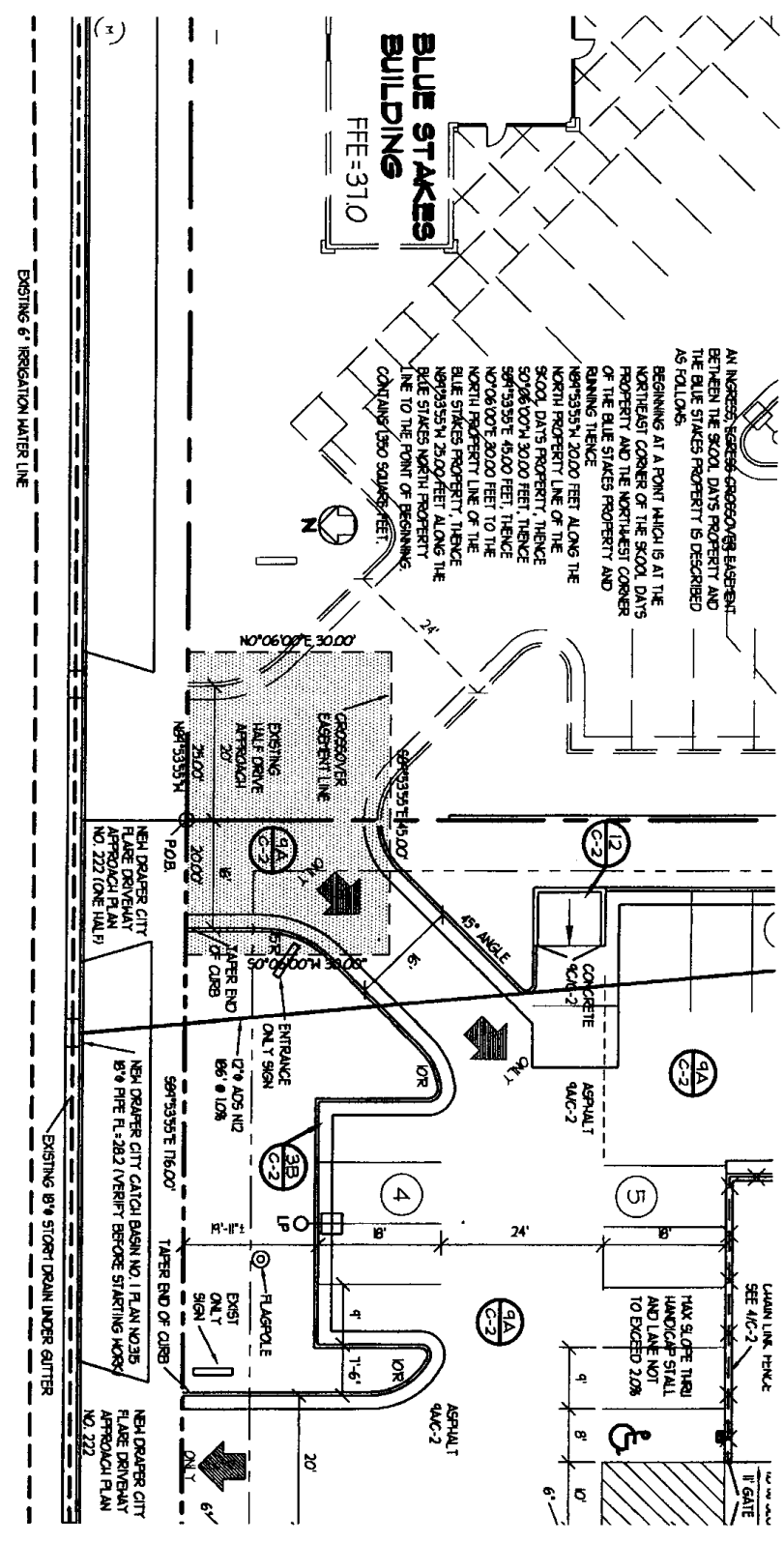
Beginning at a point which is South 00°10'43" East along the section line 1251.30 feet (also North 00°10'43" West 1419.47 feet from the Southwest corner) and South 89°53'55" East 181.12 feet (said point is also South 00°10'43" East 157.36 feet from a Utah State right-of-way brass) from the West quarter corner of Section 31, Township 3 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 89°53'55" East 612.44 feet; thence South 00°10'43" East 214.34 feet to a fence; thence along said fence South 89°56' West 278.27 feet; thence North 00°10'43" West 214.09 feet to the point of beginning.

F - POOR COPY
CO. RECORDED

BK 9398 PG 5155

BLUE STAKES BUILDING
FFE=310

AN INGRESS, EGRESS GROUNDSURFACE EASEMENT BETWEEN THE SKOOL DAYS PROPERTY AND THE BLUE STAKES PROPERTY IS DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT WHICH IS AT THE NORTHEAST CORNER OF THE SKOOL DAYS PROPERTY AND THE NORTHEAST CORNER OF THE BLUE STAKES PROPERTY AND RUNNING THENCE
N89°33'55" W 20.00 FEET ALONG THE NORTH PROPERTY LINE OF THE SKOOL DAYS PROPERTY, THENCE
S07°06'00" W 30.00 FEET, THENCE
S89°53'55" E 43.00 FEET, THENCE
N07°06'00" E 20.00 FEET TO THE NORTH PROPERTY LINE OF THE BLUE STAKES PROPERTY, THENCE
N89°33'55" W 25.00 FEET ALONG THE BLUE STAKES NORTH PROPERTY LINE TO THE POINT OF BEGINNING, CONTAINING 650 SQUARE FEET.



EXISTING 12" WATER LINE

13200 SOUTI

Exhibit C

EXISTING FH

THE TO SECTION MONUMENT
REFER TO LOT 2 94891 HARGETTS COTTAGEAL SUBDIVISION PLAT
PETERSON ENGINEERS, P.C. 101 SOUTH 400 WEST MIDVALE UTAH
PHONE 801-259-3503