

Fiber Optic

www

I. Grant of Easement:

The **Department of Aging and Disability Services (“GRANTOR”)**, on behalf of Denton State Supported Living Center (**“FACILITY”**), acting by and through its duly authorized officer by virtue of the authority granted in §533.005 of the Texas Health and Safety Code, in consideration of Four Thousand, Four Hundred, Seventy-Seven Dollars and 13/100 DOLLARS (\$4477.13) and other good and valuable consideration representing compensation for other damages to **GRANTOR**, and the mutual benefits to be derived by the parties, GRANTS, BARGAINS, SELLS AND CONVEYS to Denton Independent School District (**“GRANTEE”**), its successors and assigns, a non-exclusive easement (the “Easement”) approximately five feet (5.0’) in width, one thousand six hundred thirty feet (1630’) in length and at a depth subsurface of eight feet (8’) in depth from the natural elevation of the land area, along, over, under and across certain property (the “Property”) of **GRANTOR** located on the grounds of its **FACILITY**, which is situated primarily at 3980 State School Road, Denton, Denton County, Texas.

II. Location of Easement Area:

A plat of the Property showing the surface area affected by this Easement (the “Easement Area”) is provided in Exhibit “A,” and a metes and bounds description of the Easement Area is provided in Exhibit “B,” both attached to and made a part of this Utility Easement Agreement (the “Agreement”).

III. Purpose of Agreement:

GRANTEE shall have the right to use the Easement Area for the purpose of placing, constructing, reconstructing, installing, operating, repairing, maintaining, inspecting, replacing, upgrading or removing (in whole or in part) fiber optic and all necessary and desirable appurtenances and structures to permit the lines and/or systems to be placed, constructed, reconstructed, installed, operated, repaired, maintained, inspected, replaced, upgraded or removed (in whole or in part) in the Easement Area. (Together, **GRANTEE'S** lines, systems, appurtenances and structures specified above shall be referred to as **GRANTEE'S** "Equipment.")

IV. Reservation:

GRANTOR reserves the right to place, construct, operate, repair, maintain, inspect, replace or remove fencing, walls, sidewalks, pathways, pedestrian amenities (such as benches, tables, chairs, flowerbeds, shrubbery, and other incidental improvements), driveways and parking areas in the Easement Area to the extent that such uses do not unreasonably interfere with the rights granted to **GRANTEE** hereunder;

however, **GRANTOR** may not place, erect or maintain (a) any buildings in the Easement Area, (b) any structure of any kind in such proximity to the Equipment as would constitute a violation of the National Electric Safety Code in effect at the time the structure is erected, or (c) without **GRANTEE'S** prior written consent, any permanent structure, including, but not limited to drainage, filtration or detention ponds, or make changes in grade, elevation, or contour of the land that would materially impair **GRANTEE'S** access to its Equipment in the Easement Area for the purposes stated herein.

V. Right of Access:

GRANTEE has the right of ingress and egress across the Property only for the purposes set out herein. **GRANTEE** agrees to occupy the surface only to the extent and for the length of time necessary for placing, constructing, reconstructing, installing, operating, repairing, maintaining, inspecting, replacing, upgrading or removing its Equipment. Any gate or opening used by **GRANTEE** for ingress or egress in the exercise of its rights must be kept in proper condition and closed at all times other than during ingress or egress.

VI. Duties:

Prior to any initial or later excavation, **GRANTEE** will contact Dig-Tess, the Texas Excavation Safety System, or its successor or like entity, to have all existing utilities located. Findings will be reviewed with **FACILITY** prior to excavation.

GRANTEE will bore under **FACILITY'S** roads. Quality trees, as determined by **FACILITY**, will be bored under or trenched around.

GRANTEE will bury all underground components of its Equipment not less than eighteen inches (18") below the cultivated surface. Following installation, **GRANTEE** will provide an accurate drawing to **GRANTOR** depicting the location of **GRANTEE'S** underground Equipment.

If **GRANTEE** damages or destroys any fences, roads, bridges, culverts, buildings, underground utilities, irrigation systems or other equipment on or surrounding the Easement Area, or elsewhere on the Property, other than its own personal property, **GRANTEE** must, within a reasonable period of time and at its expense, repair or replace the property to the extent that it will, as nearly as practicable, be in like condition as before such damage or destruction. Repairs and replacements will be subject to **FACILITY** approval. At the option of **GRANTOR**, in lieu of repairing or replacing, money damages will be paid. Such damages include those incurred as a result of **GRANTEE** or its agents or employees entering, departing, or by reason of being present on the Property.

The Property affected by **GRANTEE'S** activities will be leveled by **GRANTEE** as required by **FACILITY** so the Property will, to the degree possible, be in the same condition as before **GRANTEE'S** activities. **GRANTEE** will reseed areas with **FACILITY**-approved seed types within sixty (60) days of construction and will provide an initial watering to ensure that the seeds have an opportunity to germinate. **GRANTEE** agrees to notify **FACILITY**, in the manner set forth in Section XXII, no later than three (3) business days after completion of the initial construction, and any subsequent construction, and cooperate with **FACILITY** personnel in an on-site

inspection to assess damages resulting from **GRANTEE'S** activities. Prior to any subsequent alteration or additional construction, **GRANTEE** agrees to notify **FACILITY**, in the manner set forth in Section XXII, five (5) business days prior to commencement of such activities.

GRANTEE will adhere to all **FACILITY** rules provided by **FACILITY** and as may be amended by **FACILITY** during the duration of the Agreement.

GRANTEE will comply with all applicable federal, state and local rules, laws, codes and regulations related to the installation, operation and maintenance of its Equipment.

VII. No Fee Interest Granted:

This is a grant of a non-exclusive easement only, and does not grant any fee interest to the surface or any interest in the minerals, on or under the Property. This conveyance is made subject to any and all outstanding easements, right-of-ways and leases covering the Property.

VIII. Duration of Agreement:

This Agreement is for a term of ten (10) years and may be renewed only at the election of **GRANTOR**. **GRANTOR** will give **GRANTEE** notice of its intention to renew or non-renew at least thirty (30) days prior to the end of the ten (10) year term. Subject to Section IX, **GRANTEE** expressly understands its continued possession of the Property under this Agreement without first obtaining from **GRANTOR** a renewal of this Agreement is a violation which subjects **GRANTEE** to a penalty of ONE HUNDRED DOLLARS (\$100.00) for each day of such violation. **GRANTEE** agrees to pay **GRANTOR** such penalty within ten (10) business days after receipt of notice from **GRANTOR** sent in compliance with Section XXII, herein.

IX. Removal of Equipment:

GRANTEE has the right to remove its Equipment at the expiration of this Agreement, provided all obligations to **GRANTOR** under this Agreement are fully satisfied.

GRANTEE, at its option, may either remove or leave its Equipment upon termination of the Agreement or abandonment of the Easement Area. If **GRANTEE** elects to remove its Equipment, all removal activity will be completed within thirty (30) calendar days from the date of termination of the Agreement or abandonment of the Easement Area. If removal causes other injury to the surface or to **GRANTOR'S** improvements, **GRANTEE** will repair such damage according to the provisions set forth in Section VI within sixty (60) calendar days after completion of such removal. If left behind, the Equipment will then become the property of **GRANTOR**.

X. Reservation of Non-Conflicting Use of Property:

GRANTOR expressly reserves for its use and for the use of any agency, commission or department of the State of Texas access to the Property, provided such use is not inconsistent with the rights of **GRANTEE**.

It is further agreed that **GRANTEE** will comply with the Antiquities Code of Texas, TEXAS NATURAL RESOURCES CODE, § 191, et seq., and **GRANTEE** further agrees that title to archaeological objects or artifacts, if any, in or on the Property remain with **GRANTOR**.

XI. Hold Harmless:

To the extent permitted by law, **GRANTEE** agrees to and shall indemnify, defend and hold **GRANTOR**, its officers, agents and employees harmless from any and all claims, suits, demands, judgments, damages, penalties, fines, costs, liabilities, losses and causes of action for personal injury or death and/or damage to or destruction of property or improvements caused by, arising out of, or resulting from the exercise of rights granted to **GRANTEE**, its employees, agents, or other persons acting under **GRANTEE'S** direction. **GRANTEE** further agrees to pay all expenses, costs, and attorney's fees, consultants' fees and experts' fees associated with such claims, suits, demands, judgments, damages, penalties, fines, costs, liabilities, losses and causes of action, as well as those incurred by **GRANTOR** in the enforcement of this indemnity provision. The provisions of this Section shall survive expiration, abandonment or earlier termination of the Agreement or Easement granted herein.

XII. Hazardous Waste:

GRANTEE will not commit or suffer to be committed waste upon the Property; will keep the Property and **GRANTEE'S** Equipment in good working order and repair and in a clean, safe and healthful condition; and comply with all state, federal and local laws, rules and regulations with regard to the use and condition of the Equipment on the Property.

GRANTEE will not use the Property or permit the Property to be used so as to cause, suffer, or allow any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Property resulting from, but not limited to, spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds. **GRANTEE** is solely responsible for cleanup of any contamination resulting from violation of this provision.

If the presence of hazardous materials on the Property is caused or permitted by **GRANTEE** and such materials result in contamination of the Property or if contamination of the Property by hazardous materials otherwise occurs and is related to **GRANTEE'S** use, then **GRANTEE** will indemnify, defend and hold **GRANTOR**, its officers, agents and employees harmless from any and all claims, suits, demands, judgments, damages, penalties, fines, costs, liabilities or losses (including diminution in value of the Property, damages from the loss of or restriction on use of the Property or of any amenity of the Property, and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees) which arise during or after the Agreement or Easement term as a result of such contamination. This indemnification of **GRANTOR** by **GRANTEE** includes costs incurred in connection with any investigation of site conditions for any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the Property.

The provisions of this Section shall survive expiration, abandonment or earlier termination of the Agreement or Easement.

XIII. Default and Termination:

It is agreed upon default by **GRANTEE** of any of these covenants, conditions and agreements, **GRANTOR** has the right, and such right is expressly reserved, to declare the Easement granted herein forfeited, without prejudice to any claim **GRANTOR** may have against **GRANTEE**; provided, however, **GRANTOR** will give **GRANTEE** written notice of its intention to terminate this Agreement and the reasons for termination, and **GRANTEE** will have thirty (30) calendar days after receipt of notice to rectify the default or violation. Upon timely correction, this Agreement will remain in full force and effect. Termination of the Agreement for any cause is automatic and all rights granted revert to **GRANTOR** without the necessity of any further action or suit on the part of **GRANTOR**. Upon termination or abandonment, **GRANTEE** agrees to file a Release of Easement in the Deed Records of the Texas county/counties where **FACILITY** and the Easement Area are located. Abandonment will be deemed to have occurred when the Easement Area is not used for the purposes granted for a continuous period of one (1) calendar year.

XIV. Waiver:

No waiver by **GRANTOR** or **GRANTEE** of any default or breach of any term, condition, or covenant of this Agreement will be a waiver of any other term, condition, or covenant.

XV. Privileges and Immunities:

GRANTEE acknowledges **GRANTOR** is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by **GRANTOR** of its right to claim exemptions, privileges, and immunities as may be provided by law.

XVI. Texas Law to Apply:

This Agreement is construed under and in accordance with the laws of the State of Texas and is performable in Denton County, Texas.

XVII. Grammatical Interpretation:

When the singular number is used, it also includes the plural, and the masculine gender includes the feminine and neuter genders.

XVIII. Headings:

Headings are for reference and will not be construed to limit or alter the meaning of the provisions of this Agreement.

XIX. Parties Bound:

This Agreement is binding upon and inures to the benefit of the **GRANTOR** and **GRANTEE** and their respective heirs, executors, administrators, legal representatives,

successors in interest or office, and assigns (but this Section does not constitute permission for an assignment).

XX. Saving Clause:

Should any clause in this Agreement be found invalid by a court of law, the remainder of this Agreement will not be affected and all other provisions in this Agreement remain valid and enforceable to the fullest extent permitted by law.

XXI. Assignment:

GRANTEE may not sell, assign, or convey this Agreement or the Easement without the express written consent of **GRANTOR**, which will not be unreasonably withheld, and any attempt by **GRANTEE** to sell, assign, or convey this Agreement or the Easement without such consent will cause the Agreement and Easement to terminate. Any unauthorized assignment shall be void and of no effect, and such assignment shall not relieve **GRANTEE** of any liability for any obligation, covenant, or condition of this Agreement. This provision, and the prohibition against assignment contained herein, shall survive expiration or earlier termination of this Agreement or Easement. For purposes of this Section, an assignment is any transfer, including by operation of law, to another of all or part of the interest or rights herein granted.

XXII. Notices:

Notices to the **GRANTOR**, **GRANTEE** and **FACILITY** will be signed by the designated representative of the notice-giving party, or its successors in interest or office, and delivered personally or sent by U.S. certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to **GRANTOR**: Chris Palmer
Director, Real Estate Management
Health and Human Services Commission
909 W. 45th Street MC2057
Austin, Texas 78751

If to **FACILITY**: Nancy Condon
Director
Denton State Supported Living Center
3980 State School Road
Denton, Tx. 76202

If to **GRANTEE**: Ernie Stripling
Technology Information Officer
Denton Independent School District
1307 North Locust Street
Denton, Texas 76201

Notice will be deemed given on the date it is hand delivered or deposited in the U.S. Mail.

XXIII. Entire Agreement:

This Agreement constitutes the entire agreement between **GRANTOR** and **GRANTEE** and will not be explained, modified, or contradicted by any prior or contemporaneous negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by a subsequent written instrument, agreed to by the **GRANTOR** and **GRANTEE**.

XXIV. Effective Date:

This Agreement is deemed to be in force beginning the tenth day after signature by **GRANTOR**.

GRANTOR: Department of Aging and Disability

By: _____
Jon Weizenbaum
Commissioner

Facility Concurrence:

By: _____
Nancy Condon
Director

TERMS AND CONDITIONS EXPRESSLY ACKNOWLEDGED AND ACCEPTED:

GRANTEE: DENTON INDEPENDENT SCHOOL DISTRICT

The foregoing Utility Easement Agreement was offered for approval on motion made by _____, seconded by _____, and after discussion was adopted by the Board of Trustees of the Denton Independent School District at a regularly scheduled meeting called, posted, and held in Denton, Denton County, Texas, on August 14, 2012, at which _____ Trustees were present, by the following vote: ____ For, ____ Against, and ____ Abstaining.

Charles Stafford, President
Board of Trustees

ATTEST:

Rudy Rodriguez, Ph.D., Secretary

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, acting on behalf of **GRANTOR**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day
of _____, _____ A.D.

Notary Public in and for the State of Texas

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF DENTON §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Charles Stafford, acting in his capacity as President of the Board of Trustees of the Denton Independent School District, **GRANTEE**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day
of _____, 2013 A.D.

Notary Public in and for the State of Texas

UNICORN LAKE
BOULEVARD

P.O.B.

WATER EASEMENT
VOL. 5255, PG. 1970
O.P.R.D.C.T.

20' GAS EASEMENT

TRACT 1
5' PERMANENT EASEMENTDENTON STATE SCHOOL
STATE OF TEXAS
8916 SQ. FT., 0.205 ACRESVARIABLE WIDTH WATER
LINE EASEMENT
VOL. 5255, PG. 1962
O.P.R.D.C.T.SANITARY SEWER &
WATER EASEMENT
090727 DSS
C.D.E.D.100 AC
STATE OF TEXAS
VOL. 435, PG. 12
D.R.D.C.T.

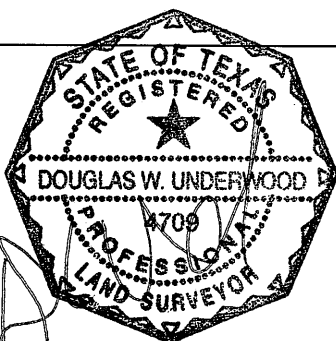
LINE TABLE		
LINE	LENGTH	BEARING
L1	7.19	S 43°55'13" E
L2	18.21	N 88°00'04" W
L3	281.79	S 01°43'16" W
L4	103.90	S 07°16'02" W
L5	88.09	S 01°43'25" W
L6	50.00	S 28°24'52" W
L7	30.00	S 21°25'43" W
L8	40.95	S 01°57'27" W
L9	55.11	S 70°09'29" E
L10	60.13	N 70°09'29" W
L11	41.19	N 01°57'27" E
L12	30.00	N 21°25'43" E
L13	50.00	N 28°24'52" E
L14	87.15	N 01°43'25" E
L15	103.90	N 07°16'02" E
L16	286.15	N 01°43'16" E
L17	5.16	S 02°07'51" W
L18	42.90	S 77°52'59" W
L19	2.74	N 70°09'29" W
L20	42.74	N 77°52'59" E

PARCEL 4
EXHIBIT "B"TOTAL PERMANENT
EASEMENT
(0.210 ACRES)

STATE SCHOOL ROAD

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONETRACT 2
5' PERMANENT EASEMENTDENTON STATE SCHOOL
STATE OF TEXAS
221 SQ. FT., 0.005 ACRES

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD	DISTANCE
C1	68.74'	985.00'	S 18°08'01" W	68.73'
C2	5.00'	1040.00'	S 19°58'47" W	5.00'
C3	72.80'	980.00'	N 18°17'55" E	72.78'
C4	18.07'	994.93'	S 89°18'42" E	18.07'
C5	5.17'	588.00'	N 34°30'43" E	5.17'

DOUGLAS W. UNDERWOOD,
R.P.L.S. NO. 4709
SURVEYED ON THE GROUND
MARCH 2012D.I.S.D.
DENTON
TEXAS

DATE: 03/01/12

DRAWN BY: JC

APPROVED BY: JBA

SCALE: 1" = 200'

UNDERWOOD

DRAFTING & SURVEYING, INC.
3404 INTERURBAN ROAD
DENISON, TEXAS 75021
(903) 465-2151 FAX: (903) 465-21525' EASEMENT
M E P & P R R COMPANY SURVEY
ABSTRACT NO. 950
GRANTOR: DENTON STATE SCHOOL

UNDERWOOD

DRAFTING & SURVEYING, INC.

PARCEL 4-1 5' UTILITY EASEMENT

Situated in the City of Denton, County of Denton, State of Texas, being a part of M E P & P R R Company Survey, Abstract No. 950, and being a part of the 100 acre tract of land conveyed to the State of Texas by deed of record in Volume 435, Page 12, Deed Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

***Beginning** at the intersection of the west right-of-way line of State School Road and the south right-of-way line of Unicorn Lake Boulevard;*

***Thence** South 43°55'13" East, along said west right-of-way line, a distance of 7.19 feet to a point;*

***Thence** over and across said 100 acre tract the following calls and distances;*

North 88°00'04" West, a distance of 18.21 feet to a point;

South 01°43'16" West, a distance of 281.79 feet to a point;

South 07°16'02" West, a distance of 103.90 feet to a point;

South 01°43'25" West, a distance of 88.09 feet to a point;

South 28°24'52" West, a distance of 50.00 feet to a point;

South 01°57'27" West, a distance of 1040.50 feet to a point;

South 21°25'43" West, a distance of 30.00 feet to a point;

South 01°57'27" West, a distance of 40.95 feet to a point;

with a non-tangent curve to the left having a radius of 985.00 feet (chord bears South 18°08'01" West, a distance of 68.73 feet) an arc length of 68.74 feet to a point;

South 70°09'29" East, a distance of 55.11 feet to a point in said west right-of-way line;

***Thence** with said right-of-way and with a non-tangent curve to the left having a radius of 1040.00 feet (chord bears South 19°58'47" West, a distance of 5.00 feet) an arc length of 5.00 feet to a point;*

***Thence** over and across said 100 acre tract the following calls and distances;*

North 70°09'29" West, a distance of 60.13 feet to a point

with a non-tangent curve to the left having a radius of 980.00 feet (chord bears North 18°17'55" East, a distance of 72.78 feet) an arc length of 72.80 feet to a point;

North 01°57'27" East, a distance of 41.19 feet to a point;

North 21°25'43" East, a distance of 30.00 feet to a point;

North 01°57'27" East, a distance of 1040.81 feet to a point;

North 28°24'52" East, a distance of 50.00 feet to a point;

North 01°43'25" East, a distance of 87.15 feet to a point;

North 07°16'02" East, a distance of 103.90 feet to a point;

North 01°43'16" East, a distance of 286.15 feet to a point in the said south right-of-way line;

***Thence** with a non-tangent curve to the left having a radius of 994.93 feet (chord bears South 89°18'42" East, a distance of 18.07 feet) an arc length of 18.07 feet to the **Point-of-Beginning** and containing 8916 square feet of land.*

Sheet 2 of 3

PARCEL 4-2
5' UTILITY EASEMENT

Situated in the City of Denton, County of Denton, State of Texas, being a part of M E P & P R R Company Survey, Abstract No. 950, and being a part of the 100 acre tract of land conveyed to the State of Texas by deed of record in Volume 435, Page 12, Deed Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at the northeast corner of said 100 acre tract, said point being on the east right-of-way line of F. M. 2499

*Thence South 02°03'13" West, a distance of 1752.92 feet to the northeast corner of the remainder tract created by the acquisition of F. M. 2499 right-of-way, the **True Point-of-Beginning**;*

Thence South 02°07'51" West, a distance of 5.16 feet to a point;

Thence South 77°52'59" West, a distance of 42.90 feet to a point;

Thence North 70°09'29" West, a distance of 2.74 feet to a point in the easterly right-of-way line of said F. M. 2499;

Thence with said right-of-way line and a curve to the right having a radius of 588.00 (chord bears North 34°30'34" East, 5.17 feet) an arc distance of 5.17 feet to a point;

*Thence North 77°52'59" East with said right of-way line, a distance of 42.74 feet to the **Point-of-Beginning** and containing 221 square feet of land.*