

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2013, by and among, **Charles F. Bauer Realty Partnership, LLLP**, a Kentucky limited liability limited partnership having an address of 4011 Portia Court, Louisville, Kentucky 40220 ("Bauer"), **Jefferson County School District Finance Corporation**, a Kentucky nonprofit corporation, having an address of 3332 Newburg Road, Vanhoose Education Center, Louisville, Kentucky 40218 ("JCPS"), and **Indian Creek Land & Investment Co., L.P.**, a Delaware limited partnership, having a mailing address of 4000 Main, Kansas City, Missouri 64111 ("Indian Creek").

WITNESSETH:

WHEREAS, Bauer is the owner in fee simple of those 2 certain tracts of land along Brownsboro Road described as Tract 2 ("Tract #2") and Tract 3 ("Tract #3") on that certain Minor Subdivision Plat prepared by Land Design & Development, Inc. dated December 5, 2012, and approved by the Louisville Metro Planning Commission in Docket # 18396, which is attached to that certain General Warranty Deed dated December 28, 2012, of record in Deed Book 9999, Page 466, in the Office of the Clerk of Jefferson County, Kentucky (the "Minor Plat"), with title vested in Bauer pursuant to that certain deed of record in Deed Book 9149, Page 800 and pursuant to that certain deed of record in Deed Book 9999, Page 461 in the Office of the Clerk of Jefferson County, Kentucky (Tract #2 and Tract #3 shall collectively be referred to herein as the "Bauer Property");

WHEREAS, Indian Creek is the owner in fee simple of that certain tract of land along Brownsboro Road described as Tract 1 ("Tract #1" or the "Indian Creek Property") on the Minor Plat, pursuant to that certain General Warranty Deed dated December 28, 2012, of record in Deed Book 9999, Page 466, in the Office of the Clerk of Jefferson County, Kentucky (Tract #1, Tract #2, and Tract #3 shall collectively be referred to herein as the "Subject Property") all in Jefferson County, Kentucky;

WHEREAS, JCPS is the owner in fee simple of certain property upon which Chenoweth Elementary currently exists, located at 3622 Brownsboro Road in Jefferson County, Kentucky, by virtue of a certain deed of record in Deed Book 7472, Page 643, in the Office of the Clerk of Jefferson County, Kentucky (the "JCPS Property") and JCPS is also the owner in fee simple of the entry road into the JCPS Property known as "Country Lane", also by virtue of that certain deed of record in Deed Book 7472, Page 643, in the Office of the Clerk of Jefferson County, Kentucky (the "JCPS Country Lane Property"); and

WHEREAS, that certain ALTA Survey of the Indian Creek Property prepared by Kevin M. Phillips, dated December 21, 2012 revealed that the former Doll's Market grocery building located on Tract #1 (the "Building") encroaches upon the JCPS Property and a portion of the steps leading to the Building (the "Steps") encroaches upon the JCPS Country Lane Property, with both encroachments as shown on **Exhibit A-1 and Exhibit A-2** attached hereto and incorporated herein (collectively, the "Building Encroachments");

WHEREAS, the survey of the Bauer Property further revealed that a portion of the chain link fence on the JCPS Property (the "Fence") encroaches upon the Bauer Property, as shown on **Exhibit B** attached hereto and incorporated herein (the "Fence Encroachment"); and

WHEREAS, Bauer and JCPS both hereby desire to grant an easement, as set forth

herein, to resolve both the Building Encroachments and the Fence Encroachments by giving Indian Creek permanent easement rights to the Building Encroachment Area and by giving JCPS permanent easement rights to the Fence Encroachment Area, both as hereinafter defined.

NOW, THEREFORE, the parties declare as follows:

1. **Beneficial Parties; Binding Effect.** The rights, privileges, obligations and burdens hereby imposed and all other terms of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns as well as their employees, tenants, invitees and guests.

2. **Building Encroachment Easement.** JCPS hereby grants to Indian Creek easements (the “Building Encroachment Easements”) allowing the Building Encroachments in the Building Encroachment Areas set forth on **Exhibit A-1 and Exhibit A-2** (the “Building Encroachment Areas”). Indian Creek shall be solely responsible for maintenance of the Building Encroachments, including the Building and the Steps, in a safe condition and in good order, condition and repair, including all costs and expenses related thereto. The Building Encroachment Easement Areas may not be enlarged or modified without the written agreement of both parties to this Agreement.

3. **Fence Encroachment Easement.** Bauer hereby grants to JCPS an easement (the “Fence Encroachment Easement”) allowing the Fence Encroachment in the Fence Encroachment Area set forth on **Exhibit B** (the “Fence Encroachment Area”). JCPS shall be solely responsible for maintenance of the Fence Encroachment, including the Fence, in a safe condition and in good order, condition and repair, including all costs and expenses related thereto. The Fence Encroachment Easement Area may not be enlarged or modified without the written agreement of both parties to this Agreement.

4. **Maintenance Easement.** Bauer hereby grants to JCPS, and JCPS grants to Indian Creek, an easement of access on, over and through so much of the Bauer Property and the JCPS Property and the JCPS Country Lane Property, respectively, for the purpose of repair and maintenance of the Building and the Steps in the Building Encroachment Areas and the Fence in the Fence Encroachment Area (each, a “Maintenance Easement”). Each Maintenance Easement of access shall be for maintenance and repair purposes only and shall be limited in duration to the time that it takes to maintain and repair the Building and Fence, respectively. If either the Bauer Property or the JCPS Property is damaged or disturbed by any person or entity engaged in maintenance or repair in accordance with this Section, then the owner of the dominant parcel entitled to the Maintenance Easement shall be responsible for that damage and agrees to be responsible for any loss, damage or injury as provided in Section 7 of this Agreement.

5. **Duration of Easements.** The easements granted herein shall be perpetual and shall run with the land, provided, however, that at such time as either of the Building Encroachments is removed or substantially removed, then the applicable Building Encroachment Easement and Maintenance Easement rights granted to Indian Creek hereunder for that specific Building Encroachment shall be immediately extinguished and the grant to Indian Creek contained herein shall be void. Likewise, at such time as the Fence Encroachment is removed or substantially removed, then the Fence Encroachment Easement and Maintenance Easement rights granted to JCPS hereunder shall be immediately extinguished and the grant to JCPS contained herein shall be void.

6. **Enforcement; Remedies.** Upon any property owner's failure to comply with the provisions of this Agreement, the other property owner or owners may take such action as necessary, including court action, to enforce compliance therewith, and the non-complying property owner shall immediately, upon demand, reimburse the enforcing property owner(s) or other performing party for all expenses incurred in so doing, together with allowable statutory interest. Each property owner shall also have the right to restrain by injunction any violation or threatened violation by another property owner of any of the terms, covenants or conditions of this Agreement or to obtain a decree to compel specific performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition is not adequate.

7. **Indemnification.**

(a) Indian Creek shall be responsible for, shall insure against any and all liability for any loss, damage or injury to person or property, arising out of use or occupancy by Indian Creek of the Building Encroachment Easements and/or the Maintenance Easement, or occasioned wholly or in part by any act or omission of Indian Creek, its agents, contractors, employees or licensees, and Indian Creek hereby releases JCPS from any and all liability for the same. Indian Creek's obligation to JCPS hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, incurred in connection therewith.

(b) JCPS shall be responsible for, shall insure against any and all liability for any loss, damage or injury to person or property, arising out of use or occupancy by JCPS of the Fence Encroachment Easement and/or the Maintenance Easement, or occasioned wholly or in part by any act or omission of JCPS, its agents, contractors, employees or licensees, and JCPS hereby releases Bauer from any and all liability for the same. JCPS's obligation to Bauer, and /or Indian Creek, hereunder shall include the duty to defend against any claims asserted by reason of such loss, damage or injury and to pay any judgments, settlements, costs, fees and expenses, incurred in connection therewith.

8. **Severability.** Should any provision of this Agreement be declared invalid by legislative, administrative or judicial body of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect and shall be unaffected by such invalidity.

9. **Amendment; Termination.** This instrument shall not be terminated or modified except by writing executed by the owners of both of the properties and in form appropriate for recording with the Office of the Clerk of Jefferson County, Kentucky, which instrument shall be filed of record in the aforesaid office.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

Bauer:

CHARLES F. BAUER REALTY PARTNERSHIP, LLLP
a Kentucky limited liability limited partnership

By: _____
Charles F. Bauer, Jr., General Partner

