

# JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORPORATION

Meeting Minutes for February 11, 2013  
Called Meeting of the Board of Directors

**CALLED** meeting of the Board of Directors of the Jefferson County School District Finance Corporation held at the VanHoose Education Center, 3332 Newburg Road, Louisville, Kentucky, 40218, on Monday, February 11, 2013, at 6:50 p.m.

## **DIRECTORS PRESENT**

Mr. Chris Brady  
Mrs. Linda Duncan  
Mrs. Carol Ann Haddad  
Mr. Chuck Haddaway  
Mr. David A. Jones, Jr.  
Ms. Diane Porter  
Mrs. Debbie Wesslund

## **OTHERS PRESENT**

Donna M. Hargens  
J. Cordelia Hardin  
Stephanie Malone  
Francis J. Mellen, Jr.  
Deborah A. Bilitski

February 6, 2013

MEETING NOTICE

JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORPORATION

To All Members of the Board of Directors of the Jefferson County School District Finance Corporation:

There will be a called meeting of the Board of Directors of the Jefferson County School District Finance Corporation on Monday, February 11, 2013, at 6:50 p.m., in the Stewart Auditorium of the VanHoose Education Center, 3332 Newburg Road, Louisville, Kentucky.

The public is invited to attend.

For further information, contact Ben Jackey, Communications and Community Relations, 485-3357.

JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORPORATION

AGENDA

CALLED MEETING OF THE BOARD OF DIRECTORS  
FEBRUARY 11, 2013

- I. Call to Order
- II. Approval of Minutes of Previous Meeting of Board of Directors
- III. Approval of Reciprocal Easement Agreement for Chenoweth Elementary
- IV. Other Business
- V. Adjournment



FEBRUARY 11, 2013

TO: BOARD OF DIRECTORS  
JEFFERSON COUNTY SCHOOL DISTRICT  
FINANCE CORPORATION

FROM: DR. DONNA HARGENS  
PRESIDENT

SUBJECT: APPROVAL OF MINUTES OF PREVIOUS MEETING OF  
BOARD OF DIRECTORS

RECOMMENDATION: President Donna Hargens recommends that the minutes of the meeting of the Board of Directors which was held on January 14, 2013, as presented, be and are hereby ratified and approved, and shall be entered into the minute book of the Corporation.

RATIONALE: This action is necessary for the orderly operation of the Corporation.

DMH:RM

Attachment

## II. Approval of Minutes of Previous Meeting of Board of Directors

**Motion Passed:** President Donna Hargens recommends that the minutes of the meeting of the Board of Directors held on January 14, 2013, as presented, be and are hereby ratified and approved, and shall be entered into the minutes book of the Corporation. The recommendation passed with a motion by Mr. David A. Jones, Jr. and a second by Mrs. Debbie Wesslund.

Mr. Chris Brady	Yes	Mrs. Linda Duncan	Yes
Mrs. Carol Ann Haddad	Yes	Mr. Chuck Haddaway	Yes
Mr. David A. Jones, Jr.	Yes	Ms. Diane Porter	Yes
Mrs. Debbie Wesslund	Yes		

Mr. Frank Mellen; Wyatt, Tarrant, & Combs, LLC; provided Board members with a brief overview of the Jefferson County School District Finance Corporation.

Ms. Deborah A. Bilitski; Wyatt, Tarrant, & Combs, LLC; provided Board members with an explanation of the resolutions and reciprocal easement agreement for Chenoweth Elementary School.

FEBRUARY 11, 2013

TO: BOARD OF DIRECTORS  
JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORPORATION

FROM: DR. DONNA HARGENS  
PRESIDENT

SUBJECT: APPROVAL OF RECIPROCAL EASEMENT AGREEMENT FOR  
CHENOWETH ELEMENTARY

RECOMMENDATION: President Donna Hargens recommends that the Board of Directors approve the attached Resolutions and Reciprocal Easement Agreement for Chenoweth Elementary School.

RATIONAL: A survey of the Bauer property (the former Doll's Market grocery adjacent to Chenoweth Elementary School) revealed that a portion of a building located on the Bauer property, including on the entry road (as shown on attached Exhibits A-1 and A-2), encroaches on the JCPS property and a portion of the chain link fence on the JCPS property encroaches upon the Bauer property (as shown on attached Exhibit B).

Therefore, this action is necessary to address both the building and the fence encroachments. It is recommended these permanent easement rights be granted to each property owner.

Approval of this recommendation will authorize the President, or her designee, to sign the necessary agreements to implement the easement request.

DH:RM

Attachments

## 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

STATE OF KENTUCKY )

)SS

COUNTY OF JEFFERSON )

Subscribed, sworn to and acknowledged and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Charles F. Bauer, Jr., General Partner of **CHARLES F. BAUER REALTY PARTNERSHIP LLLP**, a Kentucky limited liability limited partnership, as their free and voluntary act and deed and as the free and voluntary act of the partnership.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
STATE AT LARGE, KENTUCKY

JCPS:

**Jefferson County School District Finance Corporation**

  
\_\_\_\_\_  
Dr. Donna Hargens, President

Date: 2/14/13

COMMONWEALTH OF KENTUCKY )

COUNTY OF JEFFERSON )

The foregoing Agreement was sworn to, subscribed and acknowledged before me this 14th day of February, 2013, by Dr. Donna Hargens, in her capacity as President of the Jefferson County School District Finance Corporation.

  
\_\_\_\_\_  
Notary Public

State at Large, Kentucky

My Commission Expires: 11-1-2013

Notary Public, State at Large, KY  
My commission expires Nov. 1, 2013



**INDIAN CREEK LAND & INVESTMENT CO., LP**  
a Delaware limited partnership

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )SS  
COUNTY OF \_\_\_\_\_ )

Subscribed, sworn to and acknowledged and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, \_\_\_\_\_ of **INDIAN CREEK LAND & INVESTMENT CO., L.P.**, a Delaware limited partnership., as his/her free and voluntary act and deed and as the free and voluntary act of the partnership.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
STATE AT LARGE, KENTUCKY

**THIS INSTRUMENT PREPARED BY:**

**BARDENWERPER, TALBOTT & ROBERTS, PLLC**  
Home Builders Association of Louisville Building  
1000 N. Hurstbourne Parkway, Second Floor  
Louisville, KY 40223

# EXHIBIT A

EXHIBIT A-1

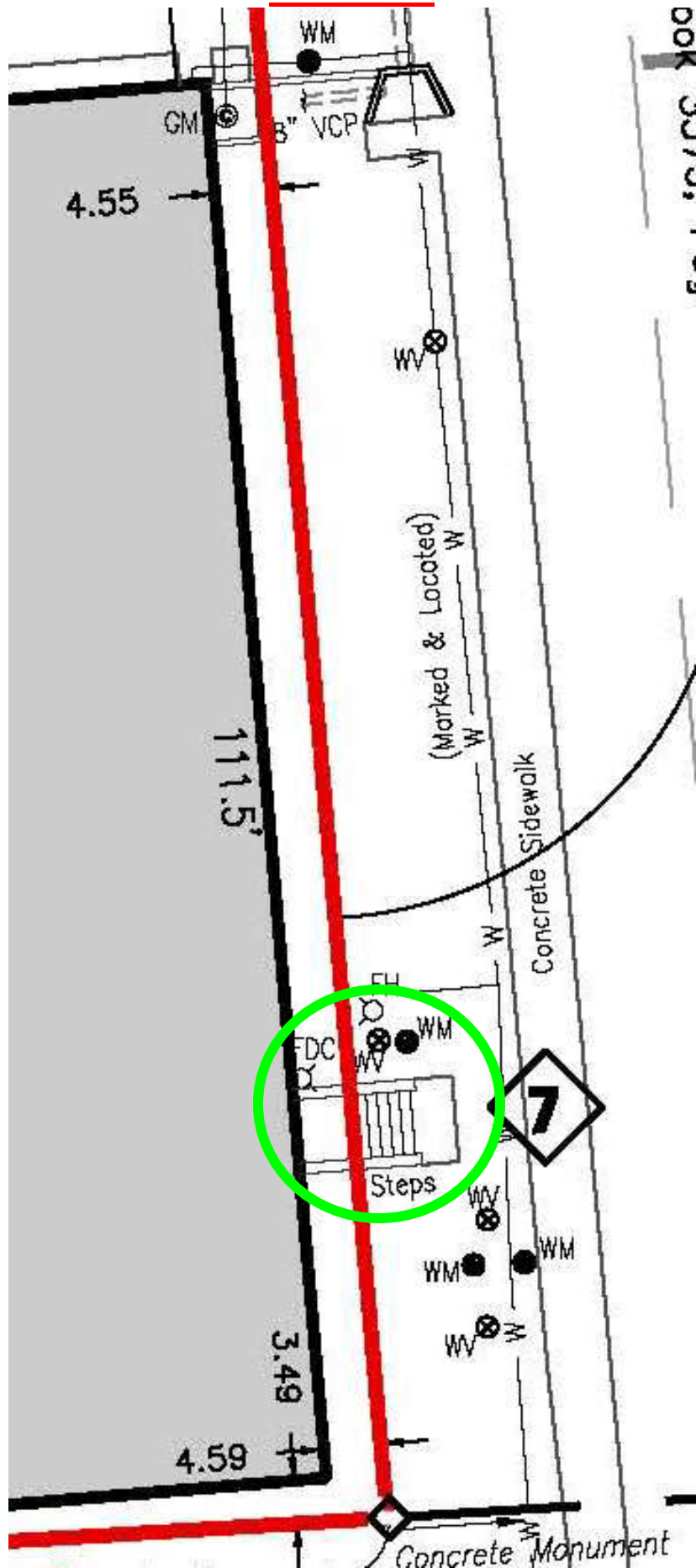
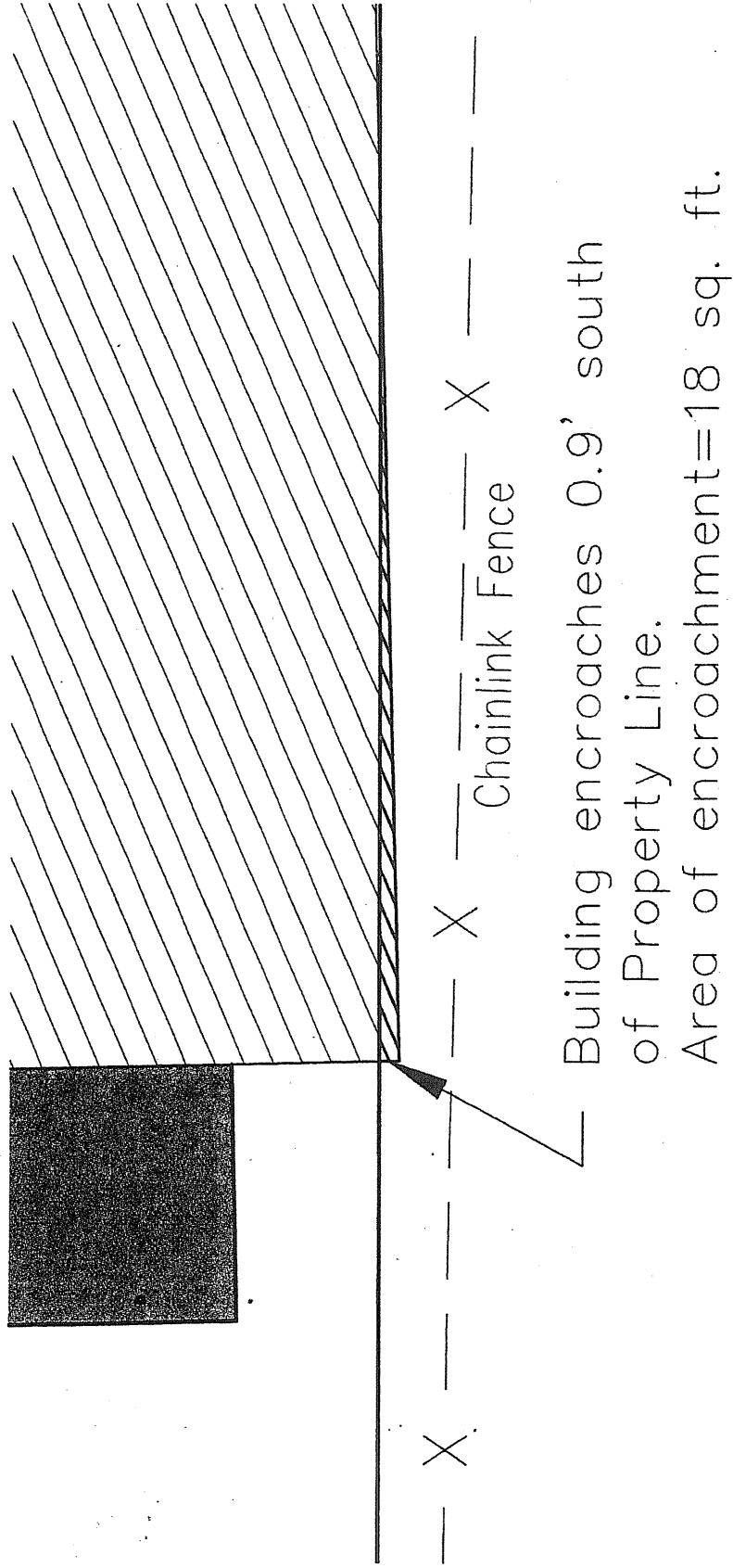
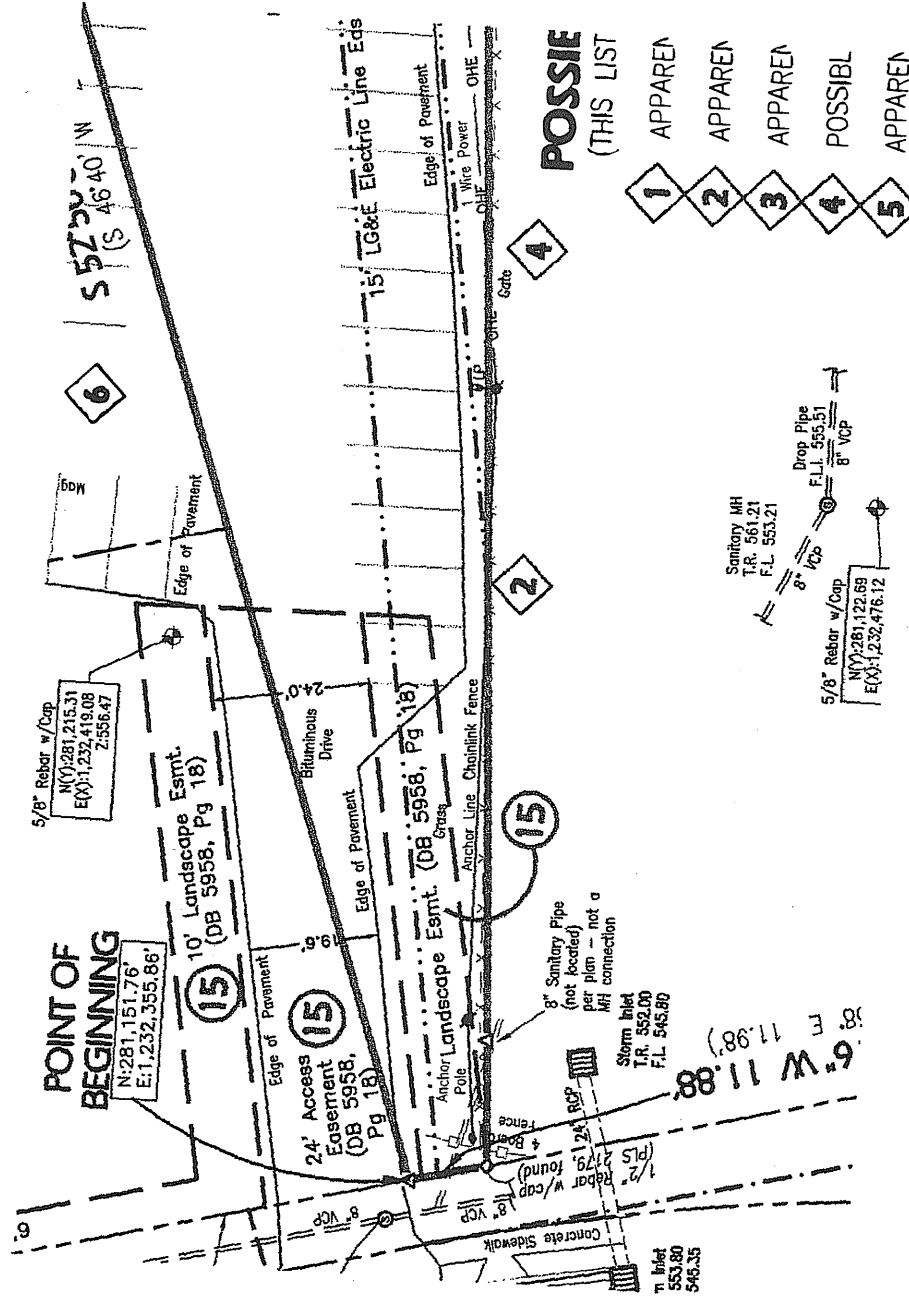


EXHIBIT A-2



# EXHIBIT B



### **III. Approval of Reciprocal Easement Agreement for Chenoweth Elementary School**

**Motion Passed:** President Donna Hargens recommends that the Board of Directors approve the attached Resolutions and Reciprocal Easement Agreement for Chenoweth Elementary School. The recommendation passed with a motion by Mr. Chris Brady and a second by Mrs. Linda Duncan.

Mr. Chris Brady	Yes	Mrs. Linda Duncan	Yes
Mrs. Carol Ann Haddad	Yes	Mr. Chuck Haddaway	Yes
Mr. David A. Jones, Jr.	Yes	Ms. Diane Porter	Yes
Mrs. Debbie Wesslund	Yes		



#### IV. Adjournment

**Motion Passed:** A motion to adjourn the February 11, 2013, meeting of the Jefferson County School District Finance Corporation at approximately 7:03 p.m. passed with a motion by Mr. Chris Brady and a second by Mr. Chuck Haddaway.

Mr. Chris Brady	Yes	Mrs. Linda Duncan	Yes
Mrs. Carol Ann Haddad	Yes	Mr. Chuck Haddaway	Yes
Mr. David A. Jones, Jr.	Yes	Ms. Diane Porter	Yes
Mrs. Debbie Wesslund	Yes		

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Donna M. Hargens, President

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Carol Ann Haddad, Secretary