

GOVERNMENTAL REAL PROPERTY EXCHANGE AGREEMENT

This Governmental Real Property Exchange Agreement entered into on this ____ day of _____, 2015 by and between the City of Canton, Georgia, a Municipality created and existing pursuant to the laws of the State of Georgia, governed by a duly elected Mayor and City Council (herein after referred to as "City" or "Canton") and the Cherokee County School System a/k/a the Cherokee County School District a/k/a the Cherokee County Board of Education, a subdivision of the State of Georgia created by an act of the Georgia Constitution, governed by an elected Chair-Person and six elected School Board Members (hereinafter referred to as the "District or "CCSD").

WITNESSETH

Whereas, the CCSD has administered, controlled, and directed school operations for its twenty (20) elementary schools, seven (7) middle schools, six (6) traditional high schools, one (1) evening open campus high school, (1) Alternative middle high school and five (5) educational centers from four (4) separate locations around the county including the former Canton Cotton Mill Office (also referred to as building "A") the former Canton Elementary School (also referred to as building "B") and the former Canton High School (also referred to as building "C"), and;

Whereas, the CCSD was forced to discontinue use of Building "B" by the Federal Department of Education Office of Civil Rights ("OCR") because the building failed to provide appropriate access pursuant to the American's with Disabilities Act ("ADA"), and;

Whereas, the CCSD's recent unprecedented growth has demonstrated the need for truly centralized administration of all aspects of school governance including the housing of all central administration within one building to the extent possible, and;

Whereas, the Superintendent of Schools recently presented the Board of Education with numerous options to accomplish the goal of centralized administration of the district's schools that included the sale of the real property upon which are erected building A and building B, the demolition of building A and building B to give way for the erection of a new central administration building or a real property exchange with the City Of Canton, and;

Whereas, while it is the desire of the City of Canton to maintain the CCSD's administration offices in downtown Canton, the CCSD has determined, after considering several options, that it is in the best interest of the CCSD to relocate to a site outside downtown Canton, and;

Whereas, the City Of Canton has indicated a desire to preserve buildings A and B and to acquire the real property upon which they are erected in order to promote the historical preservation of the two (2) buildings and to achieve additional property for parking and other uses, and;

Whereas, the City of Canton owns a tract of real property located within the City of Canton situated on the Bluffs Parkway consisting of approximately 19.78 acres, and;

Whereas, the City has indicated that the City Council may agree to exchange a portion of its property located on the Bluffs Parkway for the real property in downtown Canton upon which are erected buildings A and B, and;

Whereas, it is anticipated that the City of Canton will hold a special called meeting prior to March 19, 2015 in order to approve an open offer to the CCSD to exchange a portion of its property as is described on a drawing attached hereto and marked exhibit "A" for the property and building depicted on the attached survey marked exhibit "B" and;

Whereas, it is intended by the parties hereto that upon the City's approval to the provisions hereof in an open meeting properly called before 6 p.m. on March 19, 2015 that this agreement shall constitute an offer to exchange property with the CCSD upon the terms stated herein. This offer, if approved, will remain open until at least the conclusion of the CCSD meeting on March 19, 2015, and;

Whereas, if the CCSD accepts the City's offer to exchange property as described herein at a properly called open meeting, that this agreement shall constitute a valid and enforceable Sale/Exchange Contract between the City of Canton and the CCSD.

Now, therefore, for the mutual covenants flowing each to the other the parties hereto agree as follows:

1.

By execution hereof the parties hereto represent and warrant that the same has been duly approved by the respective governmental bodies at appropriately called and advertised meetings. This offer/land exchange contract is authorized by the provisions of O.C.G.A. §36-37-6 for the City of Canton and by O.C.G.A. § 20-2-520 for the CCSD.

2.

Upon approval hereof, the City of Canton hereby offers to exchange with the CCSD its undeveloped real property consisting of 19.78 acres +/- less and except a tract consisting of 4.19 acres, all as depicted upon the attached Exhibit "A". It is specifically agreed by the parties hereto that the tract of real property retained by the City shall be as generally depicted provided that the tract is at least 200 hundred feet wide as is depicted on the attached drawing. Upon approval by

the CCSD, the City's offer shall ripen into a Sales/Exchange Contract that will close the exchange of both tracts simultaneously as provided herein below. At such closing the City shall deliver:

- 1) A Limited Warranty Deed with a description that substantially conforms to the Exhibit "A" upon survey to be obtained by CCSD of the City's property.
- 2) Good and marketable title free from title defects or exception.
 - a. Notwithstanding any other provision of this Agreement to the contrary, CCSD shall have the right to terminate this Agreement by giving written notice to the City within twenty (20) days after the CCSD's acceptance based upon the City's inability to provide marketable title (unless, within five (5) days after the City receives CCSD's written notice of title defect together with a specific description of the curative action required by the CCSD), City provides to CCSD written notice that City will cure the title defect on or before the Closing Date.
 - b. A title defect is:
 - i. Any matter of record that materially and adversely affects the value of, or CCSD's intended use of, the Real Property; or
 - ii. Any matter which may be revealed by a survey secured by CCSD that materially and adversely affects the value of, or CCSD's intended use of, the Real Property; or
 - iii. Any evidence of the presence of Hazardous Materials, or a violation of Environmental Law, that is not disclosed in any environmental reports or disclosures CCSD has in its possession, and that materially and adversely affects the value of, or CCSD's intended use of, the Real Property.
 - c. If on or before the Closing Date, City fails to satisfy any title defect that City agreed to cure, then CCSD shall provide written notice to City on or before the expiration of the Closing Date of CCSD's election:
 - i. to extend the time for curing said title defect;
 - ii. to terminate this Agreement;
 - iii. to accept the Real Property subject to the title defect and proceed to Closing.

- 3) Governmental approval(s) as may be necessary by the City for the CCSD to construct its new administrative complex.
- 4) A modified owner's affidavit proving that the property is free and clear of liens or encumbrances other than those disclosed herein.

3.

Upon acceptance of the City's offer to exchange property at a duly advertised and called Cherokee County School Board Meeting, the CCSD agrees to exchange the real property upon which is constructed the building identified as buildings "A" and "B" more particularly described on the attached survey marked Exhibit "B" in exchange for the City's property described upon the attached drawing marked Exhibit "A". The exchange of both tracts of real property described and authorized herein shall be closed simultaneously within thirty (30) days of CCSD approval. At that closing the CCSD shall deliver:

- 1) A Limited Warranty Deed with a description that substantially conforms to the survey which is attached hereto marked Exhibit "B".
- 2) Good and marketable title free from title defects or exception.
 - a. Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to terminate this Agreement by giving written notice to the CCSD within twenty (20) days after the CCSD's acceptance based upon the CCSD's inability to provide marketable title (unless, within five (5) days after the CCSD receives City's written notice of title defect together with a specific description of the curative action required by the City), CCSD provides to City written notice that CCSD will cure the title defect on or before the Closing Date.
 - b. A title defect is:
 - i. Any matter of record that materially and adversely affects the value of, or City's intended use of, the Real Property; or
 - ii. Any matter which may be revealed by a survey secured by City that materially and adversely affects the value of, or City's intended use of, the Real Property; or
 - c. If, on or before the Closing Date, CCSD fails to satisfy any title defect that CCSD agreed to cure, then City shall provide written notice to CCSD on or before the expiration of the Closing Date of City's election:

- i. to extend the time for curing said title defect;
- ii. to terminate this Agreement ;
- iii. to accept the Real Property subject to the title defect and proceed to Closing.

- 3) A modified owner's affidavit proving that the property is free and clear of liens or encumbrances other than those disclosed herein.

4.

The parties acknowledge and agree that CCSD shall construct a joint use drive to general specification to accommodate school bus traffic. The joint use drive shall be also utilized by the City for a fire station to be located on the City's remaining property and shall be constructed to serve both CCSD's and the City's purposes. The location of the joint use drive shall be as shown on Exhibit "B" in the area denoted "Shared Drive", provided, however, that the exact location of the joint use drive shall be based on curb cut limitation, topography, or other factors as determined by CCSD in their sole and exclusive discretion. It is anticipated that either or both parties will have to grant an easement for ingress and egress across, over and through their properties in order for the other party to utilize the shared driveway, and both parties agree to grant such easements.

5.

The City acknowledges that the two (2) buildings located upon the property identified as Exhibit "B" are being exchanged **as-is, where-as**. CCSD makes no representation as to the City's ability to utilize the buildings at all in the current condition. CCSD discloses herein that one or both of the buildings may contain non-friable and/or friable asbestos, lead and other harmful chemicals or substances. In addition CCSD discloses that the subsurface of the property may be contaminated with petro chemicals from underground storage of heating oil, runoff and/or underground leaching from adjoining properties. In addition to this acknowledgement, the City specifically agrees to be responsible for any costs that may be required by any State or Federal authority to clean up, dispose of or otherwise ameliorate any contamination whether undisclosed or disclosed that may be found upon or beneath the property or within either of the structures. It is specifically agreed that this provision will survive closing. CCSD shall provide the City with all information and data (including any reports) on the condition of CCSD property and Buildings "A" and "B", including, but not limited to, the location of any underground tanks.

6.

Each party shall pay and be responsible for their own costs incurred in connection with the closing of these transactions provided however that the transferring property owner shall be responsible to pay the cost necessary to cure any title defects as referenced herein above. Because the property described in exhibit "A" is to be subdivided with each party receiving a portion of the parcel the parties will equally divide the cost of the survey of the property described in exhibit "A".

7.

CCSD shall be permitted up to thirty (30) days following the Closing to remove the remainder of its personal property from the Real Property.

8.

All notices hereunder shall be in writing, signed by the party making same and shall be sent by email or delivered personally or sent by certified or registered mail (including by overnight courier or express mail service), postage prepaid, addressed to:

CCSD: Cherokee County School District
Superintendent of Schools
1030 Keeter Rd., Building "G"
Canton, GA 30115

Copy to: troach@rcglawyers.com

City of Canton: Mayor, City of Canton
151 Elizabeth Street
Canton, GA 30114

Copy to: rmd@dyruslaw.com

or at such other address for a party as shall be specified by like notice. Any notice sent by email shall be deemed to have been duly given to the party to whom it is sent upon written confirmation of receipt, provided that a copy of such email is delivered personally or mailed to the recipient within one (1) business day of the date of the fax, in the manner herein provided. Any notice which is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or the office of such party. Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, the time of actual receipt.

9.

As additional consideration for the exchange CCSD hereby grants to the City a **Right of First Refusal** for other property belonging to CCSD as described herein below. In the event CCSD decides to sell any or all of the remaining property it owns located in downtown Canton, Georgia ("remaining Downtown Property" which consists of Canton High School also known as Building "C" and adjoining parking lot, the parking lot located at southwest corner of Archer Street and West Marietta Road and/or the parking lot located at southwest corner of Academy Street and Hill Street Circle) , CCSD shall notify City in writing of that fact and of the terms of a bona fide offer then available to CCSD and which it is then prepared to accept, and shall offer the Downtown Property to City, on the same terms and conditions as the bona fide offer. City shall have 30 days from the date notice is delivered within which to accept and agree to purchase the demised premises on the terms set forth, which acceptance and agreement must be in writing delivered to and received by CCSD within this 30 day period.

10.

With respect to all the terms and conditions of this Agreement, time is of the essence.

11.

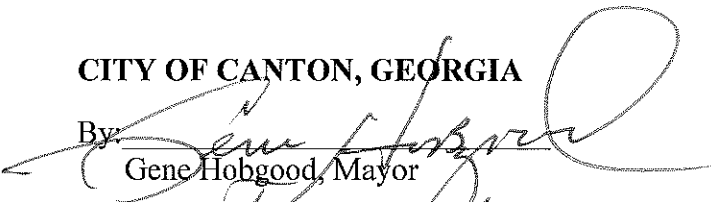
This Agreement, including the Exhibits and Schedules attached hereto, constitutes the entire agreement between the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein, shall be of any force or effect, unless same be in writing, signed by both Purchaser and Seller and attached hereto.

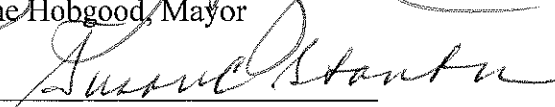
12.

In case any one or more of the provisions contained in this Agreement should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect against any party hereto, such invalidity, illegality, or unenforceability shall only apply to such party in the specific jurisdiction where such judgment shall be made, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, except that this Agreement shall not be reformed in any way that will deny to any party the essential benefits of this Agreement, unless such party waives in writing its rights to such benefits.

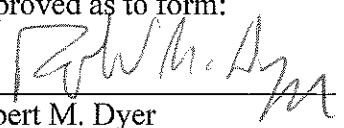
SIGNATURES ON FOLLOWING PAGE

CITY OF CANTON, GEORGIA

By: 
Gene Hobgood, Mayor

Attest: 
Susan C. Stanton, City Clerk

Approved as to form:


Robert M. Dyer
City Attorney

CHEROKEE COUNTY SCHOOL DISTRICT

By: _____
Janet Read, Chairperson

Witness

Sworn to and subscribed before me this

_____ day of _____, 2015.

PROJECT NO:

14-021

DATE:

02/06/15

REVISIONS:

NO.

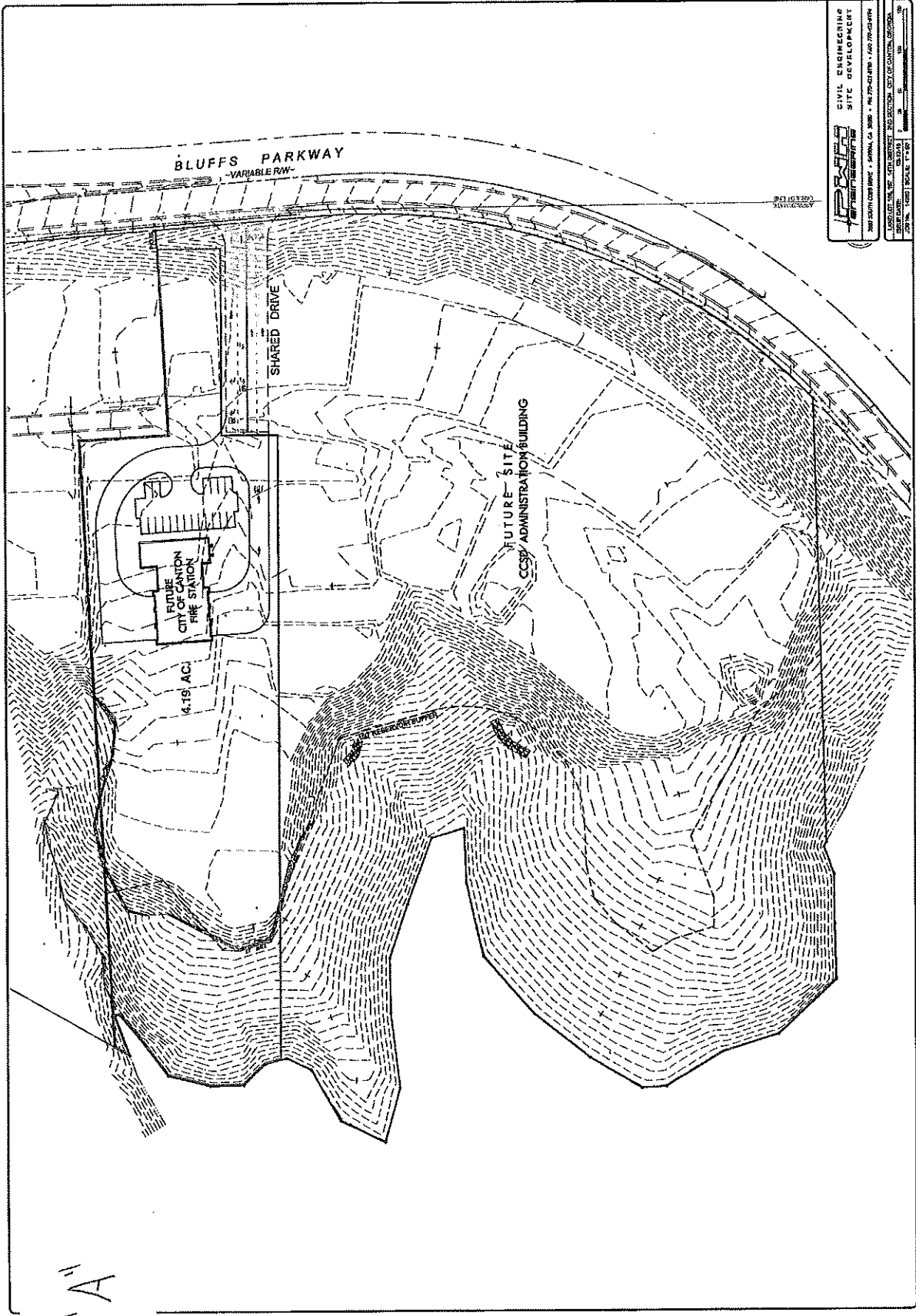
DATE

KRH ARCHITECTS
555 ADAMS RD - SUITE 4, ATLANTA, GA 30321
TEL: (770) 824-6888

New Building for
CCSD ADMINISTRATION
CANTON, GA 30115

SHEET INDEX
PRELIM
SITE
PLAN B

DRAWING NO:
C2



PRR CIVIL ENGINEERING
SITE DEVELOPMENT
1000 SOUTH CANTON RD - SUITE 4, ATLANTA, GA 30321
TEL: (770) 824-6888
FAX: (770) 824-6889
WWW.PRR-CIVIL.COM

SURVEY FOR

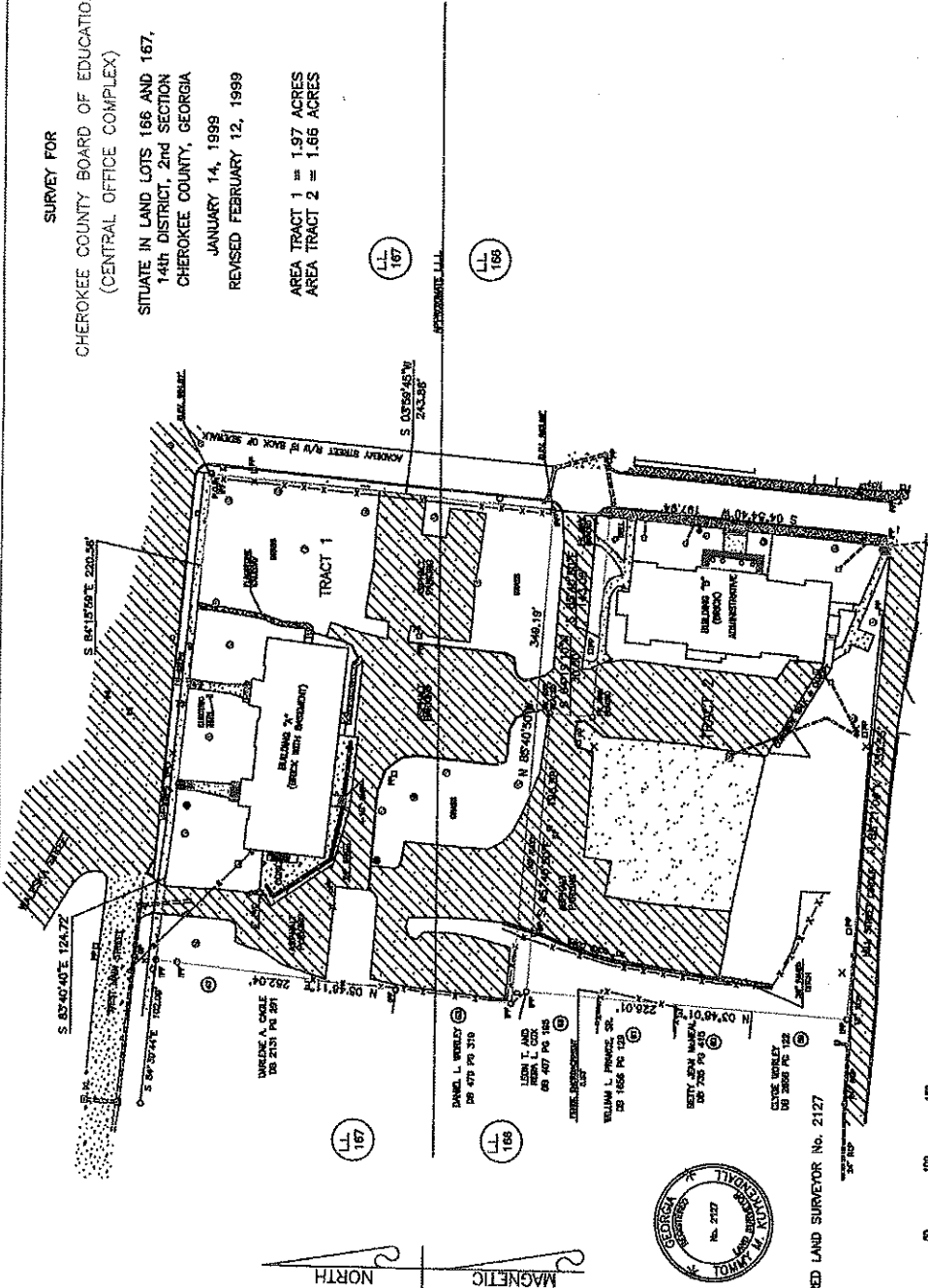
CHEROKEE COUNTY BOARD OF EDUCATION
(CENTRAL OFFICE COMPLEX)

SITUATE IN LAND LOTS 166 AND 167,
14th DISTRICT, 2nd SECTION
CHEROKEE COUNTY, GEORGIA

JANUARY 14, 1999

REVISED FEBRUARY 12, 1999

AREA TRACT 1 = 1.97 ACRES
AREA TRACT 2 = 1.66 ACRES



KUYZENDALL'S SURVEYING

2014 JACOB ROAD
KOKOMO, IN 46760
PHONE (317) 821-4225
FAX (317) 821-4227
COMMERCIAL SURVEYING
RESIDENTIAL SURVEYING
LAND ACQUISITION

NOTES: 1. ALL DISTANCES ARE IN FEET UNLESS OTHERWISE SPECIFIED.
2. ALL DISTANCES ARE TO THE CENTER OF THE ROAD UNLESS OTHERWISE SPECIFIED.
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SOURCE OF ELEVATIONS IS TOTAL STATIONING DATA LOCATED
AT THE SOUTHWEST CORNER OF BUILDING AND BOUNDARY CORNER
ELEVATION (FEET) (77.42), (CORNER SQUARE ON BOUNDARY)

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