

ATTACHMENT A

Contract No. _____

Property: Panther Court

PROPERTY SALE AGREEMENT

This Property Sale Agreement (this "**Agreement**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Agreement is 801 Plum Street, Cincinnati, OH 45202 (the "**City**") and **DENNIS M. SCHNURR, ARCHBISHOP OF CINCINNATI, TRUSTEE FOR ARCHBISHOP ELDER HIGH SCHOOL, CINCINNATI, HAMILTON COUNTY, OHIO**, whose tax mailing address is 100 East 8th Street, Cincinnati, Ohio 45202 ("**Purchaser**").

Recitals:

A. The City owns a 0.0551 acre tract of land dedicated as public right-of-way known as Panther Court in the West Price Hill neighborhood of Cincinnati, Ohio, as depicted on Exhibit A (Survey Plat) and described on Exhibit B (Quitclaim Deed) hereto (the "**Sale Property**"). The Sale Property is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

B. Purchaser owns the adjoining property that abuts Panther Court, as depicted on Exhibit A hereto ("**Purchaser's Property**"), which contains the Elder High School campus. Purchaser has petitioned the City to vacate the Sale Property as public right-of-way and seeks to purchase it to facilitate the expansion of the school campus.

C. Daniel Reitz a reputable attorney practicing in Hamilton County, Ohio, has provided an Attorney's Certificate of Title dated June 10, 2020 certifying that (i) the City and Purchaser is the owner of all the real property abutting the Sale Property, and (ii) the written consent of all necessary Purchaser to the City's vacation and sale of the Sale Property to Purchaser, a copy of which is attached as Exhibit C (Attorney's Certificate of Title) hereto.

D. Pursuant to Ohio Revised Code Chapter 723, the legislative authority of a municipal corporation may convey the fee simple estate or other interest in land used for streets and alleys if it has determined that the property is not needed for municipal purposes.

E. The City has determined that the Sale Property is not needed for transportation or any other municipal purpose and that the sale of the Sale Property will not be detrimental to the public interest.

F. The City's Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$750.00, which Purchaser is willing to pay.

G. The City has determined that eliminating competitive bidding in connection with the City's sale of the Sale Property is justified because the City has determined that selling the Sale Property to Purchaser because Purchaser owns all of the property abutting the Sale Property and therefore, as a practical matter no one other than Purchaser would have any use for it.

H. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

I. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the sale of the Sale Property to Developer at its meeting on June 19, 2020.

J. Execution of this Agreement was authorized by Cincinnati City Council by Ordinance No. _____-2020, passed on _____, 2020.

NOW, THEREFORE, the parties agree as follows:

1. **Purchase Price.** Subject to the terms and conditions set forth herein, the City hereby agrees to sell the Sale Property to Purchaser, and Purchaser hereby agrees to purchase the Sale Property from the City for \$750 (the "**Purchase Price**"). Purchaser acknowledges that it is familiar with the condition of the Sale Property and, at Closing (as defined below), the City shall convey the Sale Property to Purchaser in "as is" condition. The City makes no representations or warranties to Purchaser with respect to the condition of the Sale Property and, from and after the Closing, the City shall have no liability of any kind to Purchaser for any defects, adverse environmental condition, or any other matters affecting the Sale Property.

2. **Closing.**

(A) **Conditions.** The closing on the City's sale of the Sale Property to Purchaser (the "**Closing**") shall not occur unless and until the following conditions have been satisfied (the "**Conditions**"); *provided, however,* that if the City, in its sole discretion, determines that one or more of the Conditions would be more appropriately handled at Closing or post-Closing, the City may, if appropriate, include such Conditions in the City's Quitclaim Deed to Purchaser or handle such Conditions post-Closing. Purchaser shall perform all work and investigations and shall obtain and prepare all necessary documents pertaining to the satisfaction of the Conditions, at no cost to the City.

- (i) **Title & Survey:** Purchaser's approval of title to the Sale Property and, if obtained by Purchaser, an ALTA property survey of the Sale Property;
- (ii) **Inspections, Utilities & Zoning/Building Code Requirements:** Purchaser's approval of inspections of the Sale Property, including without limitation environmental assessments and soil assessments, all matters pertaining to utility service for the Sale Property, and all zoning and building code requirements that are applicable to the Sale Property;
- (iii) **Plats and Legal Descriptions:** Purchaser shall have provided the City with all plats and legal descriptions as required by DOTE, the City Planning Department, and the Hamilton County Auditor and Recorder in connection with the City's vacation and sale of the Sale Property;
- (iv) **Abutter's Interests:** Purchaser shall have provided the City with an attorney's certificate of title certifying that Purchaser and the City are the sole Purchasers to the Sale Property.
- (v) **Coordinated Report Conditions (CR #10-2020):**
 - (a) **DOTE:**
 - (1) The existing utilities must be granted easements or relocated at petitioner's expense.
 - (2) Abutting property owners must agree to the sale in writing.
 - (3) No Auditor's parcels shall be landlocked by this vacation/sale. If possible, potential landlocked parcels should be consolidated with parcels having legal street frontage.

(4) The Purchaser is required, at their expense, to provide the City with an acceptable legal description for the sale area that meets the recordable standards of the Hamilton County Recorder's Office.

(5) A turnaround must be constructed to DOTE standards at the proposed terminus of Panther Court and shall be within the right-of-way.

(6) All other comments from the Coordinated Site Review process for this project must be met.

(7) A DOTE street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right-of-way. All improvements in the public right-of-way must be built to City standards, policies and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street. Please note that plan drawings (2 sets), to be reviewed by DOTE, must be attached to the permit application.

(b) MSD:

(1) An existing 18" and 21" diameter sewer (approximately 8' to 9' deep) provides combined sewer service to the area. A 20' wide minimum permanent easement centered on the existing sewer will be required by MSDGC in the vacationing the ROW portion proposed. Note, an additional 3' on either side of the permanent easement will be required, along with other restrictions, as outlined per MSDGC Rules and Regulations Section 207. No structure which can interfere with the access to the public sewer or can exert loading upon a public sewer per MSDGC Rules and Regulations Section 206.

(2) A MSDGC Excavation/Fill permit as well as bond will be necessary for any construction, construction traffic, earthwork, or any other construction activity over the existing sewer should the area become part of a construction area. Additional requirements will be established by the MSDGC E/F permit (such as verification and usage of existing or abandoned building services to the combined sewer through dye testing, CCTVing, etc) depending on the final project concept plan and submission of the MSDGC Request for Availability for Sewer Service for the final project. Promptly following the conveyance, Purchaser shall consolidate the Sale Property with Purchaser's adjoining property by filing a Consolidation Plat with the Hamilton County Auditor and Recorder. The Sale Property shall not thereafter be conveyed separately from the cemetery or used for any non-cemetery-related use.

(c) GCWW:

(1) The Water Works has no objection to the subject portion vacation/sale of Panther Court contingent upon the completion of the necessary water main abandonment work at the south end section of Panther Court.

(2) The Water Works has already approved the Purchaser's Preliminary Application and a concept plan (CIN 322-Panther Court), for plugging & abandonment of the existing 6" public water main and the relocation of the public fire hydrant in Panther Court.

(3) The Purchaser's engineer is required to prepare a survey of existing conditions, which indicates all existing water mains and related appurtenances in the subject area. The engineer must prepare engineering drawings for the Water

Works. Engineering drawings will be subject to review and approval by the Water Works, and Water Works plan review charges will be charged. The Purchaser must hire a contractor to perform all necessary water main abandonment and fire hydrant relocation work. The contractor must submit a letter of intent and contractor's bond for the work to be performed. A Water Works inspector must be present during all phases of water main abandonment work and fire hydrant installation work. Water Works inspection fees will be charged. The contractor must call Mr. Mark Niehe at 591-7870 at least two full working days prior to the start of any work in this area so the location of public water mains and related appurtenances can be marked in the field.

(4) Any damage done to any public water main or related appurtenance must be repaired entirely at the Purchaser's expense. If in the future, the petitioner or their agents determine the existing water system does not meet their fire and/or domestic water demands, then the petitioner may need to upgrade the water main(s) in their area to meet their future water demands. The Water Works approval of this Coordinated Report for the subject vacation in no way relieves the petitioner of their responsibility to potentially upgrade the water system to meet their future fire and domestic water demands. This work will be performed at the expense of the petitioner and not at the expense of the Water Works.

(5) All conditions of water service to this property, including the location of attachment to the public water system, and abandonment of any existing water service branches that presently serve the subject premises, will be determined upon submission of final plans and application for service. Water service to this property is subject to all rules, regulations, and current practices and policies of the Cincinnati Water Works.

(d) Duke Energy: Duke Energy has an overhead primary conductor down the entire length of Panther Court. There is also a gas main the length of Panther Court. Duke Energy also has an easement right at the end of the street into the parking lot around this area. Duke Energy would need to maintain access to everything listed above and need to obtain this easement.

(e) Cincinnati Bell: Cincinnati Bell has existing underground telephone facilities at this location. Cincinnati Bell can approve this request if the existing facilities remain in place, in service and are able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this request will be handled entirely at the property owner's expense.

(B) Right to Terminate. If either party determines, after exercising reasonable good faith efforts, that any of the Conditions are not or cannot be satisfied within a reasonable period of time, such party shall have the right to terminate this Agreement by giving written notice thereof to the other party, whereupon this Agreement and all rights and obligations of the parties hereunder shall terminate. If all of the Conditions have not been satisfied to the satisfaction of both parties or waived in writing and for that reason the Closing has not occurred within **90 days** after the Effective Date, this Agreement and all rights and obligations of the parties hereunder shall automatically terminate.

(C) Closing Date. Provided the Conditions have been satisfied, the Closing shall take place **30 days** after the Effective Date, or on such earlier or later date as the parties may agree upon.

(D) Closing Costs and Closing Documents. At the Closing, (i) Purchaser shall pay the Purchase Price in full, and (ii) the City shall convey all of its right, title and interest in and to the Sale Property to Purchaser by *Quitclaim Deed* in the form of Exhibit B. Purchaser shall pay all Hamilton County, Ohio recording fees, transfer tax, and any and all other customary closing costs associated with

the Closing. There shall be no proration of real estate taxes and assessments at Closing, and from and after the Closing, Purchaser shall pay all real estate taxes and assessments thereafter becoming due. At Closing, the parties shall execute a settlement statement and any and all other customary closing documents that are necessary for the Closing, in such forms as are approved by the City. The City shall not however be required to execute a title affidavit at Closing or other similar documents pertaining to title, it being acknowledged by Purchaser that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Purchaser shall pay to the City any and all unpaid related and unrelated fines, penalties, judgments, water or other utility charges, and any and all other outstanding amounts owed by Purchaser to the City. The provisions of this Agreement shall survive the City's execution and delivery of the *Quitclaim Deed* and shall not be deemed to have been merged therein.

3. Notices. All notices given by the parties hereunder shall be deemed given if personally delivered, delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. regular or certified mail, addressed to the parties at their respective addresses set forth in the introductory paragraph of this Agreement. If Purchaser send a notice to the City alleging that the City is in default under this Agreement, Purchaser shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202. Notices shall be deemed given on the date of receipt.

4. Representations, Warranties, and Covenants of Purchaser. Purchaser makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Purchaser has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed and delivered by Purchaser and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Purchaser.

(ii) Purchaser's execution, delivery and performance of this Agreement and the transaction contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or any mortgage, contract, agreement or other undertaking to which Purchaser is a party or which purports to be binding upon Purchaser or upon any of its assets, nor is Purchaser in violation or default of any of the foregoing.

(iii) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of Purchaser, threatened against or affecting Purchaser, at law or in equity or before or by any governmental authority.

(iv) Purchaser shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute or governmental proceedings or investigation affecting Purchaser that could reasonably be expected to interfere substantially or materially and adversely affect its financial condition or its purchase of the Sale Property.

(v) The statements made in the documentation provided by Purchaser to the City have been reviewed by Purchaser and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances under which they were made, not misleading.

(vi) Purchaser does not owe any outstanding fines, penalties, judgments, water or other utility charges or other amounts to the City.

5. General Provisions.

(A) Entire Agreement. This Agreement (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior

discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Agreement may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Purchaser agrees that venue in such court is proper. Purchaser hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(D) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and assigns. Purchaser shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion, and any attempt to do so without the City's consent shall, at the City's option, render this Agreement null and void.

(E) Captions. The captions of the various sections and paragraphs of this Agreement are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Agreement.

(F) Severability. If any part of this Agreement is held by a court of law to be void, illegal or unenforceable, such part shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

(G) No Third Party Beneficiaries. The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(H) Brokers. Purchaser represents to the City that Purchaser has not dealt with any real estate brokers and agents in connection with its purchase of the Sale Property.

(I) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the City in other than his or her official capacity.

(J) Conflict of Interest. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the property sale shall have any personal financial interest, direct or indirect, in the property sale, and Purchaser shall take appropriate steps to assure compliance.

(K) Administrative Actions. To the extent permitted by applicable laws, and unless otherwise expressly provided in this Agreement, all actions taken or to be taken by the City under this Agreement may be taken by administrative action and shall not require legislative action of the City beyond the legislative action authorizing the execution of this Agreement.

6. Exhibits. The following exhibits are attached hereto and made a part hereof:

Exhibit A – *Survey Plat*

Exhibit B – *Form of Quit Claim Deeds*

[signature page to follow]

Executed by the parties on the dates indicated below their respective signatures, effective as of the latest of such dates (the "Effective Date").

**DENNIS M. SCHNURR,
ARCHBISHOP OF CINCINNATI,
TRUSTEE FOR ARCHBISHOP ELDER HIGH SCHOOL,
CINCINNATI, HAMILTON COUNTY, OHIO**

Date: _____, 2020

[City signatures on the following page]

CITY OF CINCINNATI

By: _____
Patrick A. Duhaney, City Manager

Date: _____, 2020

Recommended by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Property Sale Agreement

SURVEY PLAT

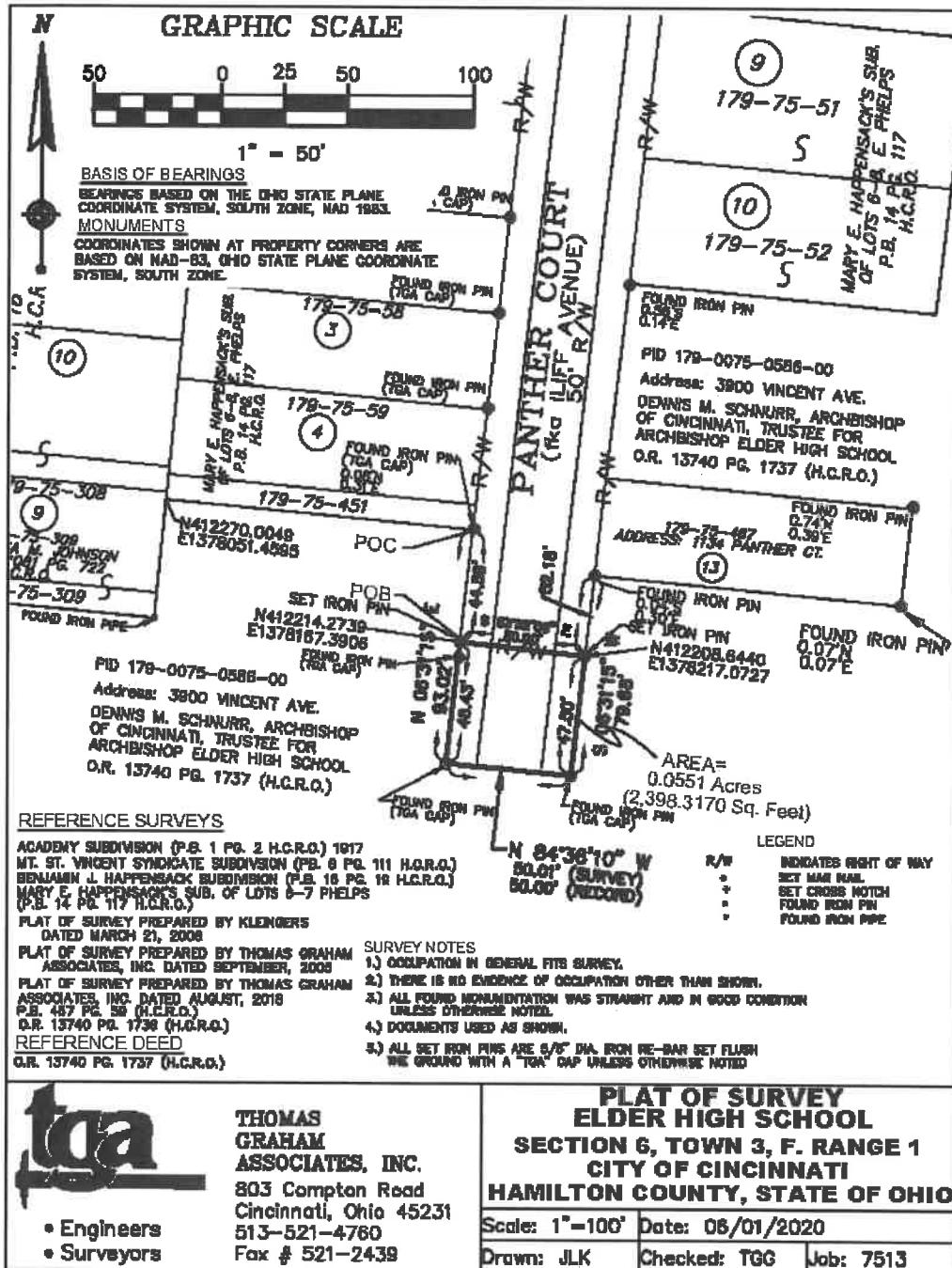


EXHIBIT B
to Property Sale Agreement
FORM OF QUIT CLAIM DEED

----- space above for recorder -----

QUITCLAIM DEED
(Portion of Panther Court)

The **CITY OF CINCINNATI**, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to **DENNIS M. SCHNURR, ARCHBISHOP OF CINCINNATI, TRUSTEE FOR ARCHBISHOP ELDER HIGH SCHOOL, CINCINNATI, HAMILTON COUNTY, OHIO**, the tax-mailing address of which 100 E. Eighth Street, Cincinnati, OH 45202, (“**Grantee**”), all of the City’s right, title and interest in and to the real property depicted on Exhibit A (Survey Plat) and described on Exhibit B (Legal Description) hereto (the “**Property**”).

Property Address:	None; certain portions of former public right-of-way known as Panther Court.
Auditor’s parcels:	None (former public right-of-way)
Prior instrument reference:	None (former public right-of-way)

Pursuant to Ohio Revised Code Chapter 723 and Ordinance No. ___-2020, passed by City Council on _____, 2020, the Property is hereby vacated as public right-of-way by the City.

(A) Creation of Utility Easement: This conveyance is subject to R.C. Section 723.041 so that any affected public utility, including but not limited to Cincinnati Bell and Duke Energy, shall be deemed to have a permanent easement in such vacated portions of Panther Court for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities.

(B) Utility Easement for Sanitary Sewers: The City hereby reserves and creates a permanent easement for an existing sanitary sewer line for the operation, maintenance, repair, and replacement of such facilities, including access thereto. Unless otherwise approved by the City in writing, Grantee, its successors and assigns, shall not place or permit to be placed within the easement area any structures or other improvements, except that landscaping, paving and other minor improvements shall be permitted. If the City determines that improvements placed within the easement area interfere with the City’s easement rights, the City may remove such improvements at Grantee’s expense. Under no circumstances shall the City or its contractors be liable for any damage to improvements placed within the easement area. Following the relocation of any existing sanitary sewers in such vacated portion of the public right-of-way to the satisfaction of the City, upon Grantee’s request, the City shall execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder’s Office, at Grantee’s cost.

This conveyance is a transfer between adjoining lot owners made in compliance with Section 711.001, Subsection (B)(1) Ohio Revised Code and does not create an additional building site nor violate any zoning regulation or other public regulation in the parcels hereby conveyed or the balance of the parcels retained by the grantor herein. The parcels hereby conveyed may not hereafter be conveyed separately from Grantee's adjoining parcel nor any structure erected thereon without the prior approval of the authority having jurisdiction of plats.

This conveyance was authorized by Ordinance No. __-2020, passed by Cincinnati City Council on _____, 2020.

Executed on _____, 2020.

CITY OF CINCINNATI

By: _____
Patrick A. Duhaney, City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2020 by Patrick A. Duhaney, City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:

City of Cincinnati Law Department,
801 Plum Street, Suite 214,
Cincinnati, Ohio 45202

Exhibit A
to Quitclaim Deed
Survey Plat

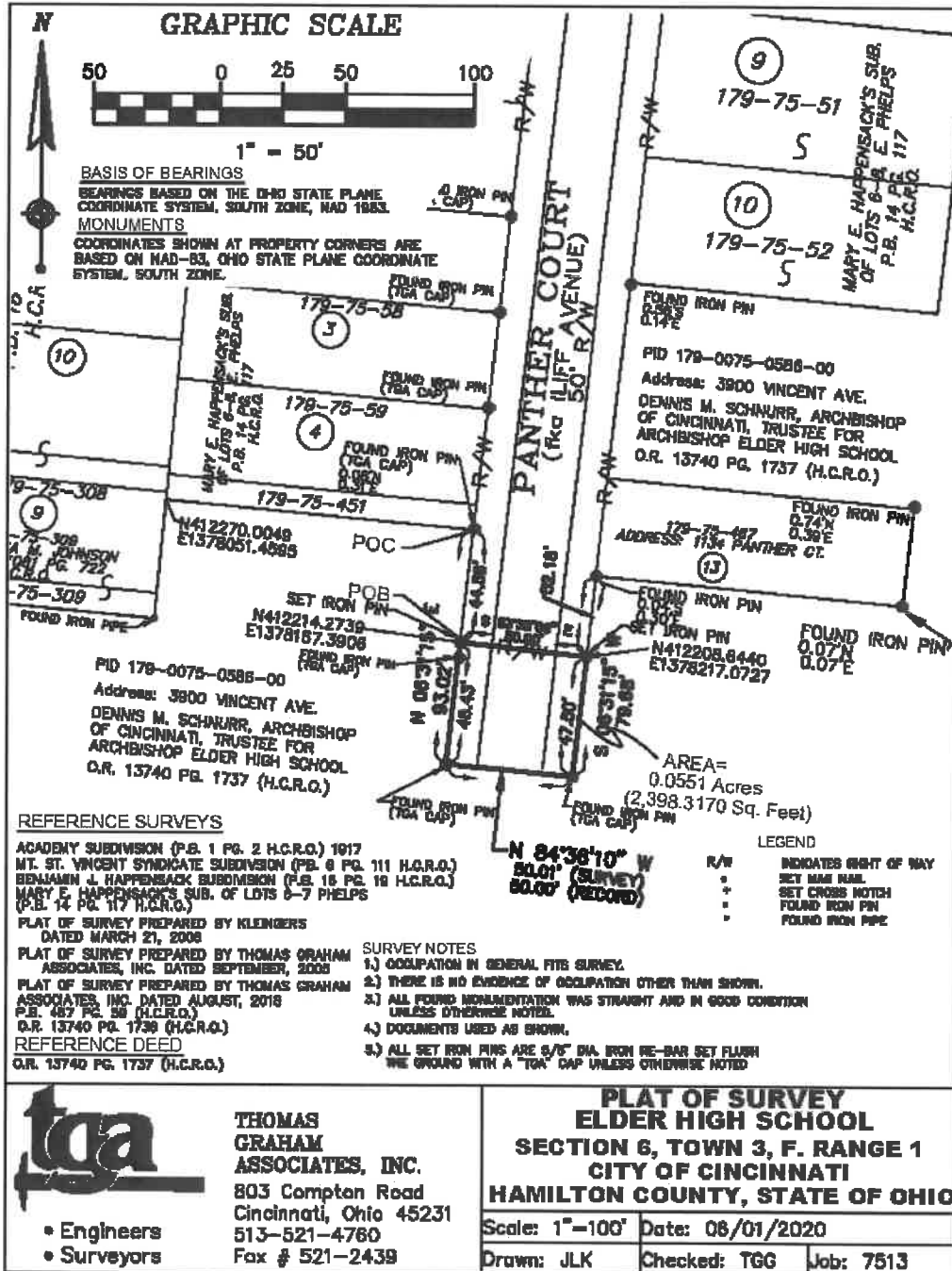


Exhibit B
to Quitclaim Deed
Legal Description

Situated in Section 6, Town 3, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part of the premises conveyed to Dennis M. Schnurr, Archbishop of Cincinnati, Trustee for Archbishop Elder High School by Deed recorded in Official Record 13740, Page 1737 of the Hamilton County Recorder's Office and being more particularly described as follows:

Commencing at a found pin at the Southeast corner of Lot 4 of Mary E. Happensack's Subdivision as recorded in Plat Book 14, Page 117 of the Hamilton County Recorder's Office and the existing West right-of-way of Panther Court; thence departing the said Southeast corner of Lot 4 with the said existing West right-of-way of Panther Court **South 06° 31' 15" West, 44.59 feet** to a set iron pin at the proposed south terminus of the existing West right-of-way of Panther Court and the point of beginning; thence with the proposed south right-of-way of Panther Court, **South 83° 32' 06" East, 50.00 feet** to a set iron pin at the proposed South terminus of the existing East right-of-way of Panther Court; thence **South 06° 31' 16" West, 47.50 feet** to a found iron pin; thence **North 84° 36' 10" West, 50.01 feet** to a found mag nail; thence **North 06° 31' 15" East, 48.43 feet** to the proposed south terminus of the existing West right-of-way of Panther Court and the point of beginning of the tract herein described.

The above described tract contains 0.0551 acres (2,398.3170 Sq. Ft.) of land and is subject to all easements and restrictions of record.

Bearings based on Ohio State Plane Coordinate System, South Zone, NAD 1983.

This description was prepared by Jason L. Kaffenberger, RLS #8428 in Ohio and is based on a survey made by Thomas Graham Associates, Inc. dated August 13th, 2018.