

Contract No. \_\_\_\_\_

Property: sale of portion of Bigelow Street  
and unnamed alley

## PROPERTY SALE AGREEMENT

This Property Sale Agreement (“**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 **BIGELOW LAND LLC**, an Ohio limited liability company, the address of which is 2718 Short Vine Street, Cincinnati, OH 45219 (“**Developer**”).

### Recitals:

A. The City owns (i) a 0.2148 acre tract of land designated as public right-of-way known as Bigelow Street, located south of Carmalt Street, (the “**Bigelow Street ROW Property**”), and (ii) a 0.00615 acre tract of land designated as public right-of-way, an unnamed alley, located west of Josephine Street (the “**Unnamed Alley ROW Property**”) located in the Mt. Auburn neighborhood of Cincinnati, (collectively, the “**Sale Property**”). The Sale Property is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”) and is more particularly depicted and described in Exhibit A (Quitclaim Deed) hereto.

B. Developer owns property that abuts the Sale Property, as depicted on Exhibit B (Site Map – Developer’s Property) hereto (“**Developer’s Property**”), which consists of a collection of improved and vacant land.

C. Developer desires to purchase the Sale Property from the City to consolidate it with Developer’s Property to facilitate the construction of an approximately 167,428 square-foot residential complex, consisting of approximately 166 residential rental units and a structured parking garage at an approximate cost of \$33,456,242 (the “**Project**”).

D. Alan S. Henderson, Esq., a reputable attorney practicing in Hamilton County, Ohio, has provided an Attorney’s Certificate of Title dated July 27, 2020 certifying that (i) (a) Developer and the City are the owners of all of the property that abuts the Bigelow Street ROW Property; (b) Developer and the City are the owners of all of the property that abuts the Unnamed Alley ROW Property; and (ii) the written consent of all necessary abutters to the City’s vacation and sale of the Sale Property to Developer, a copy of which is attached as Exhibit C (Attorney’s Certificate of Title) hereto.

E. Pursuant to Chapter 723 of the Ohio Revised Code, 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.

F. 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.

G. The City’s Real Estate Services Division has determined, by a professional appraisal, that the fair market value of the Sale Property is \$33,500, which price Developer is willing to pay (the “**Purchase Price**”).

H. 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

Developer to facilitate the Project will provide economic benefits to the City through the retention and creation of jobs and enhance the availability of adequate housing in the City that will stimulate economic growth in the Mt. Auburn neighborhood.

I. 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.

J. 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 April 17, 2020.

K. 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 Developer, and Developer hereby agrees to purchase the Sale Property from the City for the Purchase Price. Developer 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 Developer in "as is" condition. The City makes no representations or warranties to Developer 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 Developer 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 Developer (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 Developer or handle such Conditions post-Closing. Developer 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:** Developer's approval of title to the Sale Property and, if obtained by Developer, an ALTA property survey of the Sale Property;
- (ii) **Inspections, Utilities & Zoning/Building Code Requirements:** Developer'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:** Developer 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) **Abutters' Interests:** Developer shall have provided the City with an attorney's certificate of title certifying that Developer and the City are the sole abutters to the Sale Property.

(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 approximately **120 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) Developer 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 Developer by *Quitclaim Deed* in the form of Exhibit A. Developer 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, Developer 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 Developer that the City is selling the Property "as is." Pursuant to Section 301-20, Cincinnati Municipal Code, at Closing, Developer 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 Developer 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 Developer sends a notice to the City alleging that the City is in default under this Agreement, Developer 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 Developer**. Developer makes the following representations, warranties and covenants to induce the City to enter into this Agreement:

(i) Developer is an Ohio limited liability company duly organized and validly existing under the laws of the State of Ohio, is authorized to transact business in the State of Ohio, has properly filed all certificates and reports required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws relevant to the transactions contemplated by this Agreement.

(ii) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein.

(iii) Developer'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 Developer's organizational documents, or any mortgage, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

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

(v) Developer 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 Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition or its Developer of the Property.

(vi) The statements made in the documentation provided by Developer to the City that are descriptive of Developer or its facility have been reviewed by Developer 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.

(vii) Neither Developer nor any of its affiliates owes 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 Developer agrees that venue in such court is proper. Developer 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. Developer 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. Developer represents to the City that Developer 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 Developer or in the property sale, and Developer 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. Coordinated Report Conditions (CR #90-2019)**

### **(A) DOTE:**

- (i) All abutting property owners must agree to the sale/vacation in writing.
- (ii) Developer must have ownership of all private property needed for the development, prior to the vacation.
- (iii) All major issues that were identified in the Coordinate Site Review Process should be approved by the corresponding department prior to vacation of the right-of-way.
- (iv) The existing utilities must be granted easements or relocated at petitioner's expense.
- (v) 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.
- (vi) The petitioner 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.
- (vii) 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) Buildings and Inspections: A Consolidation Plat shall immediately be recorded upon completion of sale and before additional permitting activity.

(C) Parks: All trees to be removed within the ROW will need to be identified by the Developer, assessed for their value, and the compensation of the trees deposited to Parks Fund 428.

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

Exhibit A – *Quitclaim Deed*

Exhibit B – *Site Map – Developer's Property*

Exhibit C – *Attorney's Certificate of Title*

*SIGNATURE PAGE FOLLOWS*

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

**BIGELOW LAND LLC,**  
an Ohio limited liability company

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

Printed name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2020

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Paula Boggs Muething, City Manager

Date: \_\_\_\_\_, 2020

Recommended by:

\_\_\_\_\_  
John Brazina  
Director, Department of Transportation and Engineering

Recommended by:

\_\_\_\_\_  
Markiea L. Carter, Interim Director  
Department of Community and Economic Development

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

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

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Alder, City Finance Director

**EXHIBIT A**  
to Property Sale Agreement

Quitclaim Deed

SEE ATTACHED



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[SPACE ABOVE FOR RECORDER'S USE]

### QUITCLAIM DEED

The **CITY OF CINCINNATI**, an Ohio municipal corporation, for valuable consideration paid, hereby grants and conveys to **BIGELOW LAND LLC**, an Ohio limited liability company, the address of which is 2718 Short Vine Street, Cincinnati, OH 45219 ("**Grantee**"), all of the City's right, title and interest in and to the real property described on Exhibit A (*Legal Description*) and depicted on Exhibit B (*Sale Plat*) hereto (the "**Property**").

Property Address: (i) None: a 0.2148 acre tract of land designated as public right-of-way known as Bigelow Street; and

(ii) None: a 0.00615 acre tract of land designated as public right-of-way, an unnamed alley.

Auditor's Parcel #: (i) None (former public right-of-way)

(ii) None (former public right-of-way)

Prior instrument reference: None.

Pursuant to Cincinnati Municipal Ordinance No. \_\_\_\_-2020, passed by Cincinnati City Council on \_\_\_\_\_, 2020, the portion of right-of-way described on Exhibit A and depicted on Exhibit B is hereby vacated as public right-of-way by the City.

This conveyance is subject to Ohio Revised Code §723.041 so that any affected public utility shall have a permanent easement in such vacated portion of the public right-of-way for the purpose of operating, maintaining, repairing, reconstructing, and removing its utility facilities and for purposes of access to said facilities. Following the relocation of any utilities in such vacated portion of the public right-of-way to the satisfaction of the affected public utility, upon Grantee's request, the affected public utility will execute and deliver to Grantee a recordable release, for recording in the Hamilton County Recorder's Office, at Grantee's cost.

*[signature page follows]*

Executed on \_\_\_\_\_, 2020.

**CITY OF CINCINNATI**

By: \_\_\_\_\_  
Paula Boggs Muething, City Manager

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2020 by Paula Boggs Muething, City Manager of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

Recommended by:

\_\_\_\_\_  
John S. Brazina, Director  
Department of Transportation and Engineering

Recommended by:

\_\_\_\_\_  
Markiea L. Carter, Interim Director  
Department of Community and Economic Development

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

This instrument prepared by:  
City of Cincinnati Law Department  
801 Plum Street  
Cincinnati, Ohio 45202

Exhibits to Quitclaim Deed:  
Exhibit A – *Legal Description*  
Exhibit B – *Sale Plat*

**Exhibit A**  
to Quitclaim Deed

*Legal Description*

**Berding Surveying**



GPS Surveying • 3D Laser Scanning

**Description for: Uptown**  
**Location: Bigelow Street, 0.2148 Acre Street Sale**

Situated in City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

**BEGINNING** at an existing iron pin at the intersection of the northwest corner of Lot 17 of J. Bigelow Subdivision as recorded in Plat Book 2, Page 274 of the Hamilton County Recorder's Office and the south terminus of Bigelow Street;

Thence with the west line of said Bigelow Street, North 06°28'25" East, 186.80 feet to a set iron pin;

Thence with a new division line, South 83°31'35" East, 50.00 feet to a set iron pin in the east line of aforesaid Bigelow Street;

Thence with the east line of said Bigelow Street, South 06°28'25" West, 187.39 feet to an existing iron pin in the aforesaid south terminus of said Bigelow Street;

Thence with said south terminus of Bigelow Street, North 82°51'21" West, 50.00 feet to the **POINT OF BEGINNING**.

**Containing 0.2148 Acres** and being subject to all legal easements and highways of record.

The above described parcel being part of the right of way of Bigelow Street.

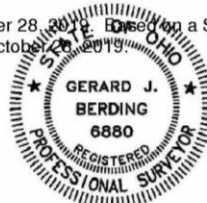
The bearings are based on State Plane Coordinate System Ohio South Zone (NAD83).

All iron pins set are 5/8" X 30" rebar with cap stamped "G.J. BERDING SURVEYING, INC".

Prepared by G.J. BERDING SURVEYING, INC. on October 28, 2019. Based on a Street Sale Plat prepared by G.J. BERDING SURVEYING, INC. on October 28, 2019.

  
Gerard J. Berding, P.S. - 6880

October 28, 2019  
Date



G.J. Berding Surveying, Inc.  
741 Main Street • Millford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com

**Description for: Uptown  
Location: Unnamed Alley, 0.0062 Acre Street Sale**

Situated in City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

**BEGINNING** at an existing iron pin and cap (G J Berding Surveying) at southwest corner of Lot 18 of J. Bigelow Subdivision as recorded in Plat Book 2, Page 274 of the Hamilton County Recorder's Office

Thence in part with the south line of Lot 18 and Lot 19 of said J. Bigelow Subdivision and the north line of an unnamed alley, South 83°57'58" East, 53.59 feet to a set iron pin in the north line of said unnamed alley;

Thence with a new division line, South 06°17'54" West, 5.00 feet to an existing iron pin and cap (G J Berding Surveying) at the north east corner of lands conveyed to Bigelow Land, LLC;

Thence along the north line of Bigelow Land, LLC, North 83°57'58" West, 53.61 feet to an existing iron pin and cap (G J Berding Surveying) in the south terminus of Bigelow Street;

Thence with the east line of said Bigelow Street, North 06°28'25" East, 5.00 feet to the **POINT OF BEGINNING.**

**Containing 0.0062 Acres** and being subject to all legal easements and highways of record.

The above described parcel being part of the right of way of an unnamed alley of J. Bigelow Subdivision as recorded in Plat Book 2, Page 274 of the Hamilton County Recorder's Office.

The bearings are based on State Plane Coordinate System Ohio South Zone (NAD83).

All iron pins set are 5/8" X 30" rebar with cap stamped "G.J. BERDING SURVEYING, INC".

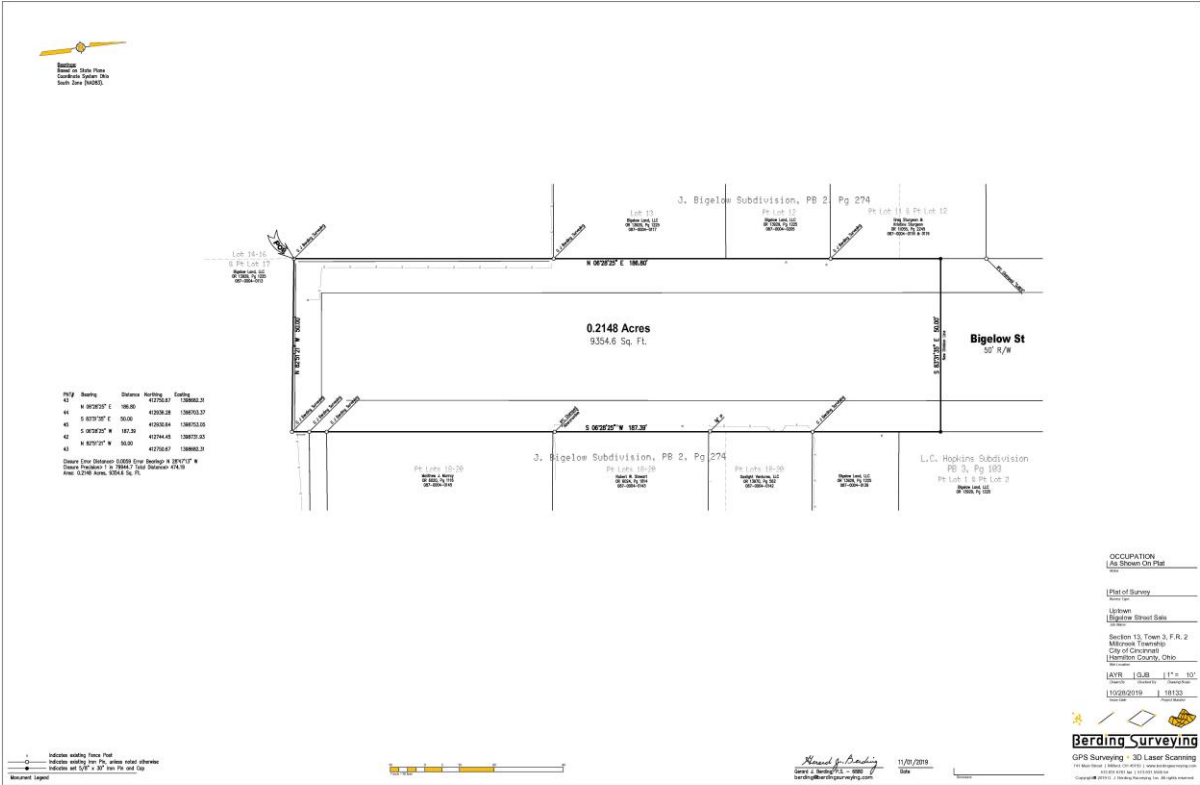
Prepared by G.J. BERDING SURVEYING, INC. on October 29, 2019. Based on a Street Sale Plat prepared by G.J. BERDING SURVEYING, INC. on October 29, 2019.

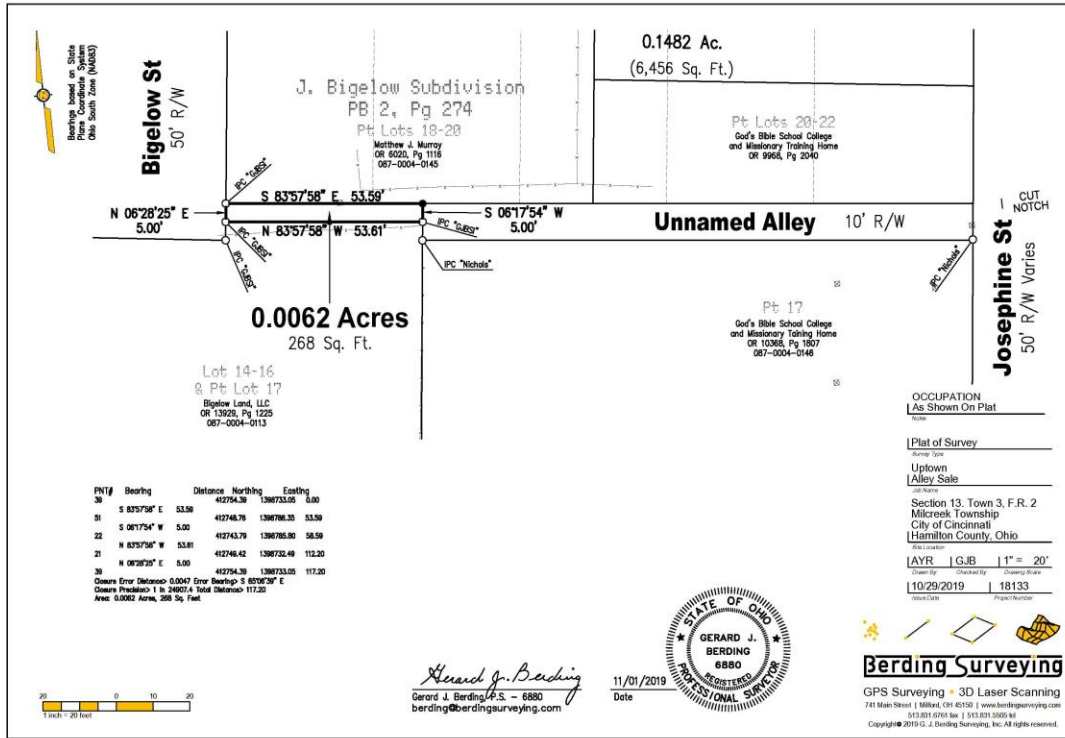
*Gerard J. Berding*  
Gerard J. Berding, P.S. - 6880  
October 29, 2019  
Date



# Exhibit B to Quitclaim Deed

## Sale Plat





**EXHIBIT B**  
to Property Sale Agreement

Site Map – Developer’s Property



**BIGELOW RESIDENTIAL**  
CITY R.O.W. PURCHASE EXHIBIT

ma architects  
2019.209  
1/15/2019  
GR

**EXHIBIT C**  
to Property Sale Agreement  
Attorney's Certificate of Title

[ See Attached ]



**ATTORNEY'S CERTIFICATE OF TITLE**

**ALL PROPERTY OWNERS ABUTTING  
A PORTION OF BIGELOW ST.  
RIGHT-OF-WAY  
(see attached Exhibit A)**

**PROPERTY OWNED**

Bigelow Land LLC

See attached Schedule A

Cincinnati, Ohio July 27, 2020

I, the undersigned attorney at law, practicing in Hamilton County, Ohio hereby certify that the above listed owners are the owners of the land abutting on the street sought to be purchased as described on the attached Exhibit A.



Alan S. Henderson  
Attorney at Law

Ohio Attorney Registration No. 0088393

{00499883-2}