

REAL ESTATE EXCHANGE AGREEMENT

THIS REAL ESTATE EXCHANGE AGREEMENT (this “Agreement”) is made and entered into as of _____, 2014 (the “Effective Date”), by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, whose address is 801 Plum Street, Cincinnati, Ohio 45202 (the “City”), and **THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT**, a city school district organized under the laws of the State of Ohio, whose address is 2651 Burnet Avenue, Cincinnati, Ohio 45219 (“CPS”) (the City and CPS are sometimes referred to herein individually as a “Party” and, collectively, as the “Parties”).

RECITALS

WHEREAS, CPS and the City each own certain real estate interests as summarized in Exhibit A (*Summary of City Swap Properties*) and Exhibit B (*Summary of CPS Swap Properties*) hereto; and

WHEREAS, CPS and the City desire to exchange certain real estate interests (including fee, easement, and leasehold interests) with no money changing hands, pursuant to Ohio Revised Code Section 3313.40, which authorizes the exchange of real estate between boards of education and municipal corporations; and

WHEREAS, the real estate interests to be conveyed by the City to CPS in the exchange (the “City Swap Properties”) are: (i) the “Old Sands Parcels” (a fee interest in land, as described and depicted in Exhibit C (*Form of Old Sands Parcels Deed*) hereto); (ii) the “Sayler Park Easement” (an easement for access and utilities, as described and depicted in Exhibit D (*Form of Sayler Park Easement*) hereto); and (iii) the “Mt. Auburn Rec Center Improvements” (located on land owned by CPS), including the gym, pool and locker room (a fee interest in the improvements, as described and depicted in Exhibit E (*Form of Mt. Auburn Rec Center Deed*) hereto) (with a leaseback to the City of the pool and locker room, together with an adjacent parking area); and

WHEREAS, the real estate interests to be conveyed by CPS to the City in the exchange (the “CPS Swap Properties”) are: (i) the “Mt. Auburn Pool Lease” (the City’s leaseback of the conveyed pool and locker room, together with an adjacent parking area, as described and depicted in Exhibit F (*Form of Mt. Auburn Pool Lease*) hereto); (ii) the “Quebec Heights Fee” (a fee interest in land, as described and depicted in Exhibit G (*Form of Quebec Heights Deed*) hereto); and (iii) the “Clifton Easement” (an easement for a public plaza, as described and depicted in Exhibit H (*Form of Clifton Easement*) hereto) (each of the City Swap Properties and CPS Swap Properties being sometimes referred to herein as a “Swap Property” and, collectively, as the “Swap Properties”, as summarized in Exhibit A and Exhibit B); and

WHEREAS, the City’s Real Estate Services Division has determined that the fair market value of the City Swap Properties are as follows: (i) Old Sands Parcels - \$20,500 (appraised value); (ii) Sayler Park Easement - \$20,160 (appraised value); and (iii) Mt. Auburn Rec Center Improvements: gym improvements - \$125,000 (appraised value), and pool and locker room improvements - \$1,265,000 (based upon recent renovation costs); and

WHEREAS, the fair market value of the CPS Swap Properties are as follows: (i) Mt. Auburn Pool Lease - \$1,275,000 (estimated value of City’s leaseback of pool and locker room area- \$1,265,000, together with adjacent parking area - \$10,500; (ii) Quebec Heights Fee - \$110,000 (appraised value); and (iii) Clifton Easement - \$381 (appraised value); and

WHEREAS, the City has determined that: (i) the Old Sands Parcels and the Mt. Auburn Rec Center Improvements (subject to the *Mt. Auburn Pool Lease*) are no longer needed for a municipal purpose; (ii) the conveyance of the Sayler Park Easement will not be detrimental to the City's interest in the burdened property; (iii) eliminating competitive bidding in connection with the City's conveyance of the City Swap Properties is in the best interest of the City because the City will receive in exchange the Clifton Easement and the Quebec Heights Fee, on which the City intends to construct and maintain a public plaza and public recreation facilities, respectively; and (iv) the City is willing to exchange the City Swap Properties for the CPS Swap Properties of lesser economic value because the City has determined that the City's improvement of the CPS Swap Properties for the recreation and enjoyment of the public will generate economic and non-economic benefits to the City that equal or exceed the fair market value of the City Swap Properties; and

WHEREAS, CPS approved the exchange of real estate interests contemplated herein at its meeting on June 9, 2014; and

WHEREAS, the Cincinnati Recreation Commission approved the exchange of real estate interests contemplated herein at its meeting on April 16, 2014; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of the City-owned property, approved the conveyance of City Swap Properties to CPS at its meeting on June 6, 2014; and

WHEREAS, the execution of this Agreement was authorized by Ordinance No. _____, passed by Cincinnati City Council on _____, 2014;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Conveyance of City Swap Properties and CPS Swap Properties. Subject to the terms, provisions, covenants and conditions set forth herein, the City hereby agrees to convey the City Swap Properties to CPS, and CPS hereby agrees to convey the CPS Swap Properties to the City. The Parties acknowledge and agree that the property interests that each Party will receive in the exchange will constitute full consideration for the interests conveyed. Except as expressly set forth herein or in the documents conveying the Swap Properties, the Parties agree that: (i) the Swap Properties are being conveyed in "AS IS" condition; (ii) each Party shall rely solely upon its own inspections and other due diligence investigations to determine the condition of the Swap Properties to be acquired; (iii) neither Party makes any representation or warranty, either express or implied, regarding the condition of the Swap Properties conveyed; and (iv) the City and CPS shall not have any liability of any kind for any defects, adverse environmental condition, or any other matters following their conveyance of the City Swap Properties and CPS Swap Properties, respectively, to the other Party.

2. Title & Physical Condition Prior to Closing. CPS and the City agree that, between the Effective Date through the date of the closing on each Swap Property, they shall not make any physical changes, or changes that would impact the title, to the Swap Property being conveyed.

3. Due Diligence Inspections; Right to Terminate Prior to First Closing.

(A) Delivery of Preliminary Documents. Within a reasonable period of time following request from the other Party, each Party shall deliver or cause to be delivered any documentation and

materials reasonably available to such Party relating to the condition, development, construction, ownership, operation, use or proposed use, occupancy, or otherwise affecting all or any part of the Swap Properties to be conveyed.

(B) Due Diligence Inspections. Between the Effective Date and the closing on each Swap Property, the acquiring Party, its agents, employees and contractors, shall have the right to enter upon the Swap Properties being acquired from time to time during business hours for purposes of conducting, at no cost to the conveying Party, any and all inspections, investigations (including environmental, geotechnical, engineering, and survey) and verifications, for the purpose of determining the suitability of such Swap Properties for its intended purposes.

(C) Termination Prior to First Closing. In addition to the parties' other termination rights under this Agreement, each Party shall have the right to terminate this Agreement for any reason, or for no reason, by delivering written notice thereof to the other Party prior to the first of the closings on the Swap Properties. Upon any such termination, the Parties shall have no further liabilities, rights or obligations hereunder except those which expressly survive the termination of this Agreement. If none of the closings on the Swap Properties have occurred by July 31, 2015, this Agreement and all rights and obligations of the Parties shall automatically terminate on such date. If the acquiring Party reasonably determines that the conditions for closing on a particular Swap Property are not satisfied, the Parties agree to use good faith efforts to amend this Agreement to provide for substitution of other real property or other consideration of similar value to such Swap Property.

4. Closings.

(A) General Conditions and Closing Procedures. The closing on the conveyance of each Swap Property shall not occur unless and until each of the following conditions has been satisfied or waived by the acquiring Party ("**General Conditions**"):

- (i) Title & Survey: Acquiring Party's approval of title (including ALTA survey, if obtained by the acquiring Party) to the Swap Property.
- (ii) Inspections, Utilities & Zoning/Building Code Requirements: Acquiring Party's approval of inspections, including without limitation environmental assessments and soil assessments, all matters pertaining to utility service, and all applicable zoning and building code requirements that are applicable to the Swap Property (including, as to the CPS Swap Properties only, approval of the City's Office of Environment and Sustainability).
- (iii) Coordinated Report (City Swap Properties only): CPS's approval of any and all other conditions as may be identified by third party utilities or City Departments in the City's Coordinated Report with respect to the City Swap Property being acquired.

The closing on each Swap Property shall take place approximately fourteen (14) days following the date on which the General Conditions have been deemed satisfied or waived by the acquiring Party, or on such earlier or later date as the Parties may agree upon. At or prior to closing, the conveying Party shall pay off any and all monetary liens on the conveyed Swap Property. At closing the Parties shall execute and deliver the property specific closing documents below. The acquiring Party shall pay all recording costs, transfer and conveyance fees and any other costs associated with the closing on each Swap Property. There shall be no proration of real estate taxes and assessments at closing, and from and after closing, the

6. Miscellaneous.

(A) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the conveyance of the Swap Properties and supersedes any prior or contemporaneous agreements with respect thereto.

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

(C) Cooperation. The Parties shall cooperate fully with each other to (i) carry out and effectuate the conveyance of the Swap Properties contemplated by this Agreement, and (ii) satisfy and comply with all of the conditions and requirements set forth herein. Wherever the approval of a Party is required, the approval of such Party shall not be unreasonably withheld.

(D) Governing Law. This Agreement and the rights of the Parties 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 the Parties hereby agree that venue in such court is proper. The Parties hereby waive trial by jury with respect to any and all matters arising under this Agreement.

(E) No Assignment. Neither Party shall assign its rights or obligations under this Agreement without the prior written consent of the other Party, any attempt to do so shall, at the option of the non-assigning Party, render this Agreement null and void.

(F) 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.

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

(H) No Brokers. The Parties represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the exchange of the Swap Properties.

(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) No Merger with Deed. The provisions of this Agreement shall survive execution and delivery of the deeds or other conveyance instruments and shall not be deemed to have been merged therein.

(K) Counterparts. This Agreement may be executed in multiple counterparts, all of which, taken together, shall constitute the Agreement.

(L) Exhibits. The following Exhibits are attached hereto and made a part hereof:
Exhibit A – Summary of City Swap Properties

Exhibit B – Summary of CPS Swap Properties
Exhibit C – Form of Old Sands Parcels Deed
Exhibit D – Form of Sayler Park Easement
Exhibit E – Form of Mt. Auburn Rec Center Deed
Exhibit F – Form of Mt. Auburn Pool Lease
Exhibit G – Form of Quebec Heights Deed
Exhibit H – Form of Clifton Easement

[Signature Pages Follow]

Executed by the Parties on the respective dates of acknowledgement of their signatures.

CITY OF CINCINNATI

By: _____
Scott Stiles, Interim City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Scott Stiles, Interim City Manager of the CITY OF CINCINNATI, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Christopher A. Bigham
Director, Cincinnati Recreation Commission

Recommended by:

Gérald Checco
Interim Director, Department of Public Services

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Reginald Zeno, City Finance Director

EXHIBIT A
to Real Estate Exchange Agreement

Summary of City Swap Properties

City Property (entire property)	City ownership interest	Property Address	Auditor Parcel no.	City Swap Properties	Value of Swap Property
Old Sands Parcels	Fee Simple	940 Poplar Street (West End)	184-0002-0009 thru -0022; 204-0019-0045 thru -0047	Fee Simple in 19,944 sf parking lot area and 31,545 sf land under school building (see <u>Exhibit C- Form of Old Sands Parcels Deed</u>)	\$ 20,500
Sayler Park	Fee Simple	6607 Hillside Ave	166-0004-0008	Easement for access drive and utilities (38,400 sf)(see <u>Exhibit D- Form of Sayler Park Easement</u>)	\$ 20,160
Mt. Auburn Rec Center Improvements (at CPS owned Taft Elementary School)	Gym, Swimming Pool and Locker Room Improvements only	270 Southern Avenue (Mt. Auburn)	087-0006-0002 087-0006-0003 087-0006-0004 087-0006-0087 087-0006-0089 087-0006-0090 087-0006-0091 087-0006-0092 087-0006-0094 087-0006-0107 088-0007-0023 088-0007-0024 088-0007-0025 088-0007-0044 088-0007-0137	All of City's interest in the Gym, Swimming Pool and Locker Room Improvements (see <u>Exhibit E- Form of Mt. Auburn Rec. Center Deed</u>)	\$ 125,000 (Gym) \$1,265,000 (Pool and Locker Room improvements)

EXHIBIT B
to Real Estate Exchange Agreement

Summary of CPS Swap Properties

CPS Property (entire property)	CPS ownership interest	Property Address	Auditor Parcel	CPS Swap Properties	Value of Swap Property
Quebec Heights	Fee Simple	1655 Ross Avenue (Quebec Heights)	204-0014-0186 204-0014-0199 204-0019-0043 204-0019-0053 204-0019-0054 204-0019-0056 204-0019-0057	Fee Simple in 7.397 acres of vacant land (see <u>Exhibit G- Form Quebec Heights Deed</u>)	\$110,000
Old Clifton School	Fee Simple	3711 Clifton Avenue (Clifton)	215-0067-0006	Easement for public plaza (1,146 sf) (see <u>Exhibit H- Form of Clifton Easement</u>)	\$381
Taft Elementary School	Fee Simple Interest (to include Mt. Auburn Rec Center Improvements once deeded by City)	270 Southern Avenue (Mt. Auburn)	087-0006-0002 087-0006-0003 087-0006-0004 087-0006-0087 087-0006-0089 087-0006-0090 087-0006-0091 087-0006-0092 087-0006-0094 087-0006-0107 088-0007-0023 088-0007-0024 088-0007-0025 088-0007-0044 088-0007-0137	20-year Lease of Pool, Locker Room Area, and Parking Area (see <u>Exhibit F- Form of Mt. Auburn Pool Lease</u>)	\$1,275,000 (present value of 20 year lease of pool and locker room area - \$1,265,000, together with the present value of a 20 year lease of parking area - \$10,500)

EXHIBIT C
to Real Estate Exchange Agreement
Form of Old Sands Parcels Deed

[see attached]

QUIT CLAIM DEED
(City-owned parcels under Old Sands School)

The CITY OF CINCINNATI, an Ohio municipal corporation (the “**City**”), for valuable consideration paid, hereby grants and conveys to THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT, a city school district organized under the laws of the State of Ohio, whose tax mailing address is 2651 Burnet Avenue, Cincinnati, Ohio 45219, all of the City’s right, title and interest in and to the following described real property:

Address: 940 Poplar Avenue
Auditor's Parcel ID: 184-2-9 thru -22 and 204-19-45 thru -47
Prior Instruments : [to be inserted]

Recommended by:

Christopher Bigham, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
Andrea E. Yang
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

EXHIBIT A
to
Quit Claim Deed
(City-owned parcels under Old Sands School)

LEGAL DESCRIPTION

[TO BE ATTACHED]

EXHIBIT B
to
Quit Claim Deed
(City-owned parcels under Old Sands School)

SITE PLAN



EXHIBIT D
to Real Estate Exchange Agreement

Form of Sayler Park Easement

[see attached]

----- space above for recorder's office -----

GRANT OF DRIVEWAY AND UTILITY EASEMENTS
(burdening Sayler Park Ballfield)

This Grant of Driveway and Utility Easements is made as of this ____ day of _____, 2014 by the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202, Attention: Director, Recreation Commission (the "**City**"), in favor of the **BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT**, the mailing address of which is 2651 Burnet Avenue, Cincinnati, Ohio 45219 ("**Grantee**").

RECITALS:

A. By virtue of the deed recorded in Deed Book 4005, Page 289, Hamilton County, Ohio Recorder's Office, the City owns approximately 7.614 acres of real property commonly known as the Sayler Park Ballfields located at 6607 Hillside Avenue, Cincinnati, Ohio 45223 (Auditor's ID no. 166-4-8) ("**Burdened Property**"), as depicted and described in Exhibit A (*Site Plan*) and Exhibit B (*Legal Description-Burdened Property*) hereto, which is under the management of the Cincinnati Recreation Commission ("**Recreation Commission**").

B. By virtue of a plat recorded in Plat Book 426 Page 62 and also recorded in Official Record 11493, Page 1142, Hamilton County, Ohio Recorder's Office, and as depicted and described in Exhibit C (*Plat of Benefitted Property*) and Exhibit D (*Legal Description-Benefitted Property*) hereto, Grantee owns the abutting real property to the southwest of the Burdened Property located at 6700 Home City Avenue, Cincinnati, Ohio 45223 (Auditor's ID no. 166-4-11) (the "**Benefitted Property**"), on which Grantee operates the Sayler Park Elementary School (the "**School**").

C. As part of an upgrade of utility service to and transportation planning for the Benefitted Property, Grantee has installed certain improvements, including light poles, parking spaces, a driveway, and underground utility lines and related facilities, including electric, sanitary sewer, storm sewer, water, gas, telephone, and telecommunications facilities connecting from Hillside Avenue across the Burdened Property to the Benefitted Property (along with any future improvements as pre-approved by Recreation Commission and installed by Grantee, "**Grantee's Improvements**") and has requested an easement from the City across the Burdened Property, being approximately 38,400 square feet in area as depicted on Exhibit E (*Easement Plat*) hereto (the "**Easement Area**") for Grantee's Improvements, ingress and egress, and parking.

D. The City's execution of this instrument was duly authorized by Ordinance ____-2014 passed by Cincinnati City Council on _____, 2014.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City does hereby agree as follows:

1. Grant. The City hereby grants to Grantee a perpetual non-exclusive easement on, over, under, across and through the Easement Area, as an appurtenance to, and for the benefit of, the Benefitted Property, on the

terms and conditions set forth herein, and for the following purposes only: (a) construction, reconstruction, operation, maintenance, repair, replacement, and removal of Grantee's Improvements; (b) pedestrian and vehicular ingress and egress between Hillside Avenue and the Benefitted Property and for all customary driveway purposes; and (c) exclusive use of the parking spaces shown on Exhibit E between 5:00 am and one hour after the end of the school day on all days in which teachers are required to report to the School (collectively, the "**Easement**").

2. The City's Reserved Rights. Grantee's easement rights shall not impair the City's right to ingress/egress to the Burdened Property, to park in the Easement Area outside of the above specified hours, or to construct, maintain and repair utilities (including third party utility facilities) or other improvements in the Easement Area to serve the Burdened Property (the "**City's Improvements**"), as long as the City's Improvements do not substantially impair Grantee's permitted uses as provided herein. The City shall have the right, upon thirty (30) days written notice to Grantee, to close some or all of the Easement Areas to public traffic to the extent necessary for construction, maintenance, removal, repair, reconstruction of the City's Improvements. If damage to Grantee's Improvements results from work associated with the City's Improvements, the City shall restore Grantee's Improvements to the same condition as existed immediately prior to the occurrence of the damage.

3. Construction, Maintenance, Alteration, and Repair of Grantee's Improvements. Following the date hereof, prior to commencing any construction, installation or alteration of improvements in the Easement Area, Grantee shall submit drawings of the proposed improvements to the Recreation Commission for its review and approval. If Grantee desires to erect one or more identification or other signs in the Easement Area, Grantee shall submit drawings, including the wording, of its proposed signs to the Recreation Commission for review and approval. Grantee shall make whatever modifications to its drawings as the Recreation Commission may require. All activities undertaken by Grantee herein shall be in compliance with drawings pre-approved by the Recreation Commission and all applicable codes, laws, and other governmental standards, policies, guidelines and requirements. Grantee shall bear all costs associated with the construction, maintenance, operation, and repair, replacement and removal of Grantee's Improvements, and all costs of repairing any and all damage to the Burdened Property, the City's Improvements, or third party utility lines caused by Grantee, its agents, employees, contractors, subcontractors, tenants, licensees or invitees, including but not limited to damage to vegetation, sidewalks, curbs, pavement, utility facilities or other improvements. Grantee, at no cost to the City, shall maintain Grantee's Improvements in a continuous state of good and safe condition and repair, including, but not limited to: (a) maintenance of paved surfaces in a level and smooth condition, free of potholes, with the same type of material as originally used or a substitute of equal quality; (b) removal, as soon as reasonably possible, of snow and ice from paved surfaces; and (c) maintenance of entrance and exit gates, traffic control devices, striping and signs, except that the City will repair any damage to the Grantee's Improvements caused by the City, at the City's expense. Grantee shall provide the City with reasonable notice before commencing any repair or maintenance work in the Easement Areas that may interrupt or interfere with the City's rights hereunder and shall cooperate with the City to maintain the City's access and use of the Burdened Property during work on Grantee's Improvements. Any relocation of the City's Improvements or of third party utilities necessitated by Grantee's activities herein shall be handled entirely at Grantee's expense.

4. Insurance. At all times during which Grantee is undertaking construction, maintenance or repair activities within the Easement Area, and in addition to whatever other insurance and bond requirements as the City may from time to time reasonably require, Grantee shall maintain a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit, \$2,000,000 aggregate, or in such greater amounts as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request and, in any event prior to undertaking any construction, maintenance or repair activities within the Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to Grantee's Improvements, no matter how caused, except as otherwise provided in paragraph 2 above.

5. Covenants Running with the Land. The provisions hereof shall "run with the land" and shall inure to the benefit of the parties and their respective successors-in-interest with respect to the Burdened Property and Benefitted Property.

6. Exhibits. The following Exhibits are attached hereto and made a part hereof:
Exhibit A - *Site Plan*
Exhibit B - *Legal Description-Burdened Property*
Exhibit C - *Plat of Benefitted Property*
Exhibit D - *Legal Description-Benefitted Property*
Exhibit E - *Easement Plat*

Executed on the dates of acknowledgements indicated below.

CITY OF CINCINNATI

By: _____
Scott Stiles, Interim City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Scott Stiles, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Chris Bigham, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

ACCEPTED BY:

THE BOARD OF EDUCATION OF THE
CINCINNATI CITY SCHOOL DISTRICT

By: _____
Eve Bolton, President

And By: _____
Diana C. Whitt, Treasurer

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Eve Bolton, President of THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT, on its behalf.

Notary Public
My commission expires: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Diana C. Whitt, Treasurer of THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT, on its behalf.

Notary Public
My commission expires: _____

This instrument prepared by:
Andrea Yang
Office of the City Solicitor
City of Cincinnati
801 Plum Street
Cincinnati, OH 45202

EXHIBIT A
to Grant of Driveway and Utility Easements
(burdening Sayler Park Ballfield)

SITE PLAN



EXHIBIT B
to Grant of Driveway and Utility Easements
(burdening Sayler Park Ballfield)

LEGAL DESCRIPTION-BURDENED PROPERTY

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

BEGINNING at a point in the east line of the George W. McIntyre Subdivision, lying north 37°02' west four hundred seventy and 05/100 (470.05) feet north of the north line of Monitor Avenue, and running thence with the east line of said Subdivision north 37°02' west four hundred thirty and 47/100 (430.47) feet to a stake, corner of George C. and Cecelia Ritter; thence with Ritter's line north 53°44' east seven hundred sixty one and 32/100 (761.32) feet to the corner of Anna Yunker; thence with two lines of same south 36°16' east one hundred (100) feet; thence North 53°44' east one hundred thirty-two and 76/100 (132.76) feet to the center line of Hillside Avenue; thence with the center line of Hillside Avenue south 14°44' east three hundred twenty-eight and 10/100 (328.10) feet; thence south 51° 48' west twenty-one and 02/100 (21.02) feet to a concrete monument, a corner of Edward Hausfeld; thence continuing with the same bearing south 51°48' west one hundred eighty-six and 98/100 (186.98) feet to a concrete monument partly covered by the root of a 20" maple; thence with a line of Walter E. Hey south 51°52' west five hundred sixty and 30/100 (560.30) feet to the place of beginning.

Containing 7.6140 acres, more or less.

Street Address: 6607 Hillside Avenue, Cincinnati, Ohio

Parcel ID: 166-0004-0008

Deed Reference: Deed Book 4005, Page 289 of the Hamilton County, Ohio Records.

EXHIBIT C

to Grant of Driveway and Utility Easements (burdening Saylor Park Ballfield)

PLAT OF BENEFITTED PROPERTY

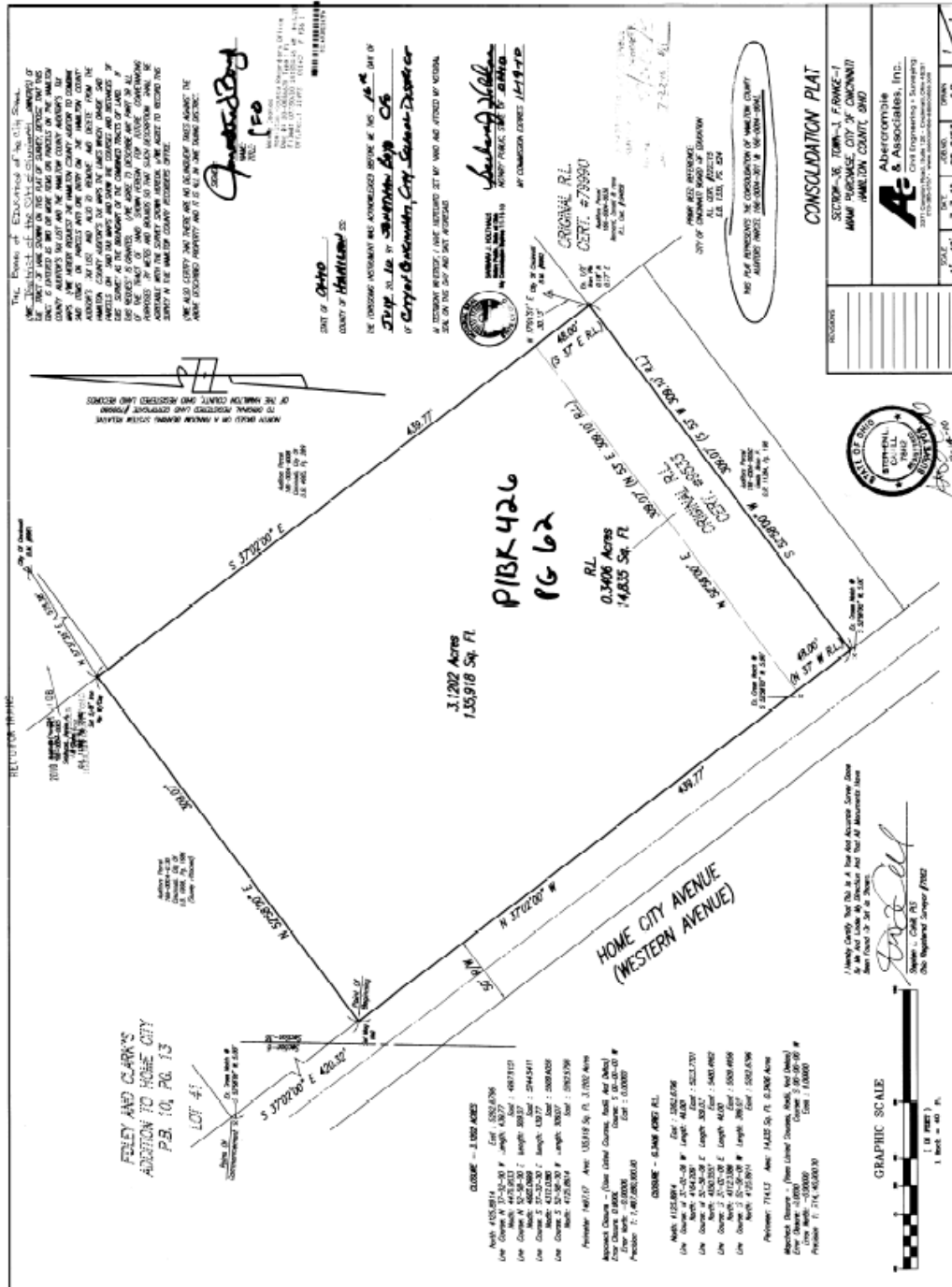


EXHIBIT D
to Grant of Driveway and Utility Easements
(burdening Sayler Park Ballfield)

LEGAL DESCRIPTION OF BENEFITTED PROPERTY

The following real estate, situated in the County of Hamilton, in the State of Ohio, and in the City of Cincinnati, and bounded and described as follows; - Being lot No. four (4) of the George T. McIntyres' Estate, and described as follows, viz; - Beginning at a point in the northerly line of Home City one hundred and fifty (150) feet eastwardly from the northeast intersection of Home City Avenue and Cherokee Avenue; said point being the south corner of lot No. forty-one (41) of Foley and Clark's Subdivision, as recorded in plat book 10, page 13, of the records of Hamilton County, Ohio; thence in a northeasterly direction along the southeasterly lines, and being the rear lines of lots forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45) and forty-six (46) of said Foley & Clarks Subdivision, three hundred and eight and 82/100 (308.42) feet to the easterly corner of said lot forty-six (46) of said Foley & Clark's Subdivision; thence south 36½ degrees east, eight hundred and ten (810) feet, more or less, to a point, four hundred and ninety-eight and 10/100 (498.10) feet from the westerly line of Monitor Street and being the northerly corner of lot No. three (3) of the George T. McIntyre's Estate; thence southwestwardly at an angle of 90 degrees, along the northwesterly line of said lot No. three (3) of the George T. McIntyre Estate, three hundred and nine and 10/100 (309.10) feet, more or less, to the northerly line of Home City Avenue, said point being five hundred and four and 98/100 (504.98) feet westerly from the westerly line of Monitor Street; thence westerly along the westerly line of Home City Avenue, eight hundred and ten (810) feet, more or less, to the south corner of lot forty-one (41) of Foley & Clark's Subdivision and the place of beginning, containing eight (8) acres of land, more or less.

EXCEPTING THEREFROM THE FOLLOWING PARCEL: Situate in Section 6, Town 2, Fractional Range 1, Miami Township, Miami Purchase, and Section 36, Town 3, Fractional Range 1, Delhi Township, lying within the City of Cincinnati, Hamilton County the State of Ohio, being the northwestern portion of Lot 4, of George T. McIntyre's partition, Case No. 62811, recorded in Book 79, Page 88, and Case No. 86886 recorded in Book 420, Page 344, of the records of the Hamilton County Court of Common Pleas, and being more particularly described as follows: Commencing at a point, said point being the intersection of the northeasterly right-of-way line of Home City Avenue with the southeasterly right-of-way line of Cherokee Avenue, said point also being the northwesterly corner of Lot 41 of Foley and Clark's addition to the Home City Subdivision, recorded in Plat Book 10, Page 13, Hamilton County Recorder's Office; thence from that point and along the northeasterly right-of-way line of Home City Avenue, said line also being along the southwesterly line of said Lot 41, and along that line extended, South 37° East for a distance of 570.32 feet to a point, said point also being in the southwesterly line of said Lot 4 of George T. McIntyre's partition, to the TRUE PLACE OF BEGINNING for this description; thence leaving the northeasterly right-a-way line of Home City Avenue, and the southwesterly line of said Lot 4, and running along a new division line of said Lot 4, North 53° East for a distance of 309.07 feet to a point, said point being in the northeasterly line of said Lot 4, and in the southwesterly line of a parcel of land conveyed to Cecelia Ritter on February 19, 1980, recorded in Deed Book 4181, Page 128, Hamilton County Recorder's Office; thence along the northeasterly line of said Lot 4 and the southwesterly line of Ritter's property North 37° 02' West for a distance of 420.321 feet to a point, said point being the northeasterly corner of said Lot 4 and the southeasterly corner of Lot 46 of said Foley and Clark's Subdivision; thence along the northwesterly line of said Lot 4 and the southeasterly lines of Lots 46, 45, 44, 43, 42, and 41 of said Foley and Clark's Subdivision. South 37° East for a distance of 308.83 to a point, said point being in the northeasterly right-of-way line of Home City Avenue, and being the northwesterly corner of said Lot 4 and the southwesterly corner of said Lot 41; thence along the northeasterly right-of-way line of Home City Avenue and the southwesterly line of said Lot 4 South 37° East for a distance of 420.32 feet to a point being the true place of beginning for this description. Containing 2.98 acres, more or less.

And the following described real estate:

Situate in Section 36, Town 3, Fractional Range 1, Miami Purchase and being more particularly described as follows:

Beginning at a point in the northeasterly line of Home City Avenue, 475.45 feet Northwesterly from the most northerly corner of Home City and Monitor Avenues;

Thence North 37 deg. 00' West, along the northeasterly line of Home City Avenue, 48 feet;

Thence North 53 deg. 00' East, 309.10 feet;

Thence South 37 deg. 00' East, 48 feet;

Thence South 53 deg. 00' West, 309.10 feet to the place of beginning.

Street Address: 6700 Home City Avenue, Cincinnati, Ohio

Parcel ID: 166-0004-0011

Instrument Reference: Plat Book 426, Page 62, and Official Record 11493, Page 1142, Hamilton County, Ohio Records.

EXHIBIT E
to Grant of Driveway and Utility Easements
(burdening Sayler Park Ballfield)

EASEMENT PLAT

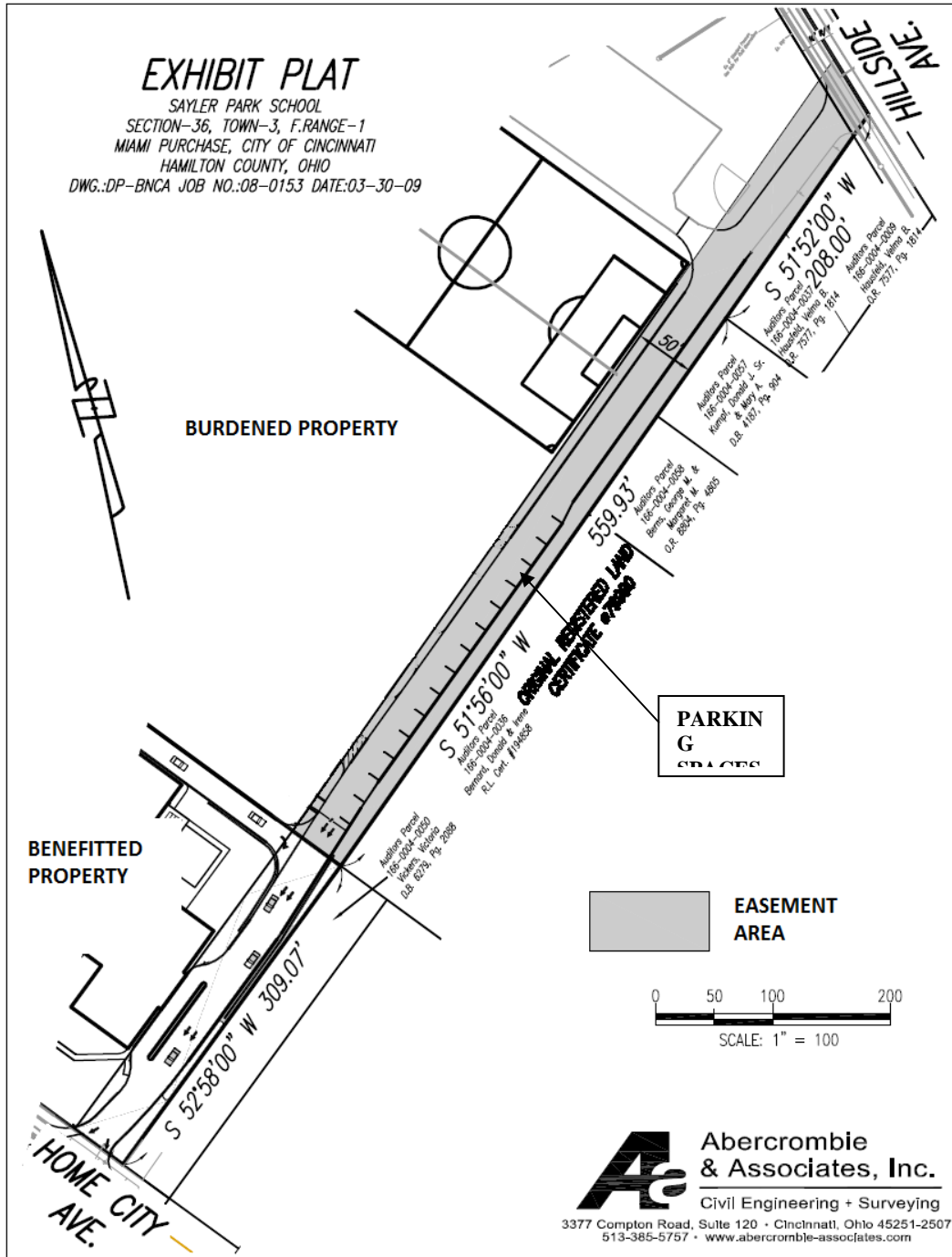


EXHIBIT E
to Real Estate Exchange Agreement
Form of Mt. Auburn Rec Center Deed
(at Taft Elementary School)

[see attached]

----- space above for Recorder's Office -----

QUIT CLAIM DEED
(City Improvements at Taft Elementary School)

The CITY OF CINCINNATI, an Ohio municipal corporation (the "City"), for valuable consideration paid, hereby grants and conveys to THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT, a city school district organized under the laws of the State of Ohio, whose tax mailing address is 2651 Burnet Avenue, Cincinnati, Ohio 45219 ("CPS"), all of the City's right, title and interest in and to the facility commonly known as the Mt. Auburn Recreation Center (the "Rec Center"), located on a portion of the land that is owned by CPS commonly known as Taft Elementary School located at 270 Southern Avenue, Cincinnati, Ohio 45219, as described on Exhibit A (*Legal Description*) hereto. Further, the City hereby conveys to CPS any and all interest that the City may have in the land underneath the Rec Center. Any and all prior agreements between the City and CPS related to the Rec Center are hereby terminated.

Address: 270 Southern Avenue, Cincinnati Ohio 45219

Auditor's Parcel ID: 087-0006-0002 087-0006-0003 087-0006-0004 087-0006-0087 087-0006-0089 087-0006-0090 087-0006-0091 087-0006-0092 087-0006-0094 087-0006-0107 088-0007-0023 088-0007-0024 088-0007-0025 088-0007-0044 088-0007-0137

Prior Instruments: [to be inserted]

This conveyance is authorized by Ordinance No. ____-2014 passed by City Council on _____, 2014.

Executed by the City on _____, 2014.

CITY OF CINCINNATI

By: _____
Scott Stiles, Interim City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Scott Stiles, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

Recommended by:

Christopher Bigham, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

Accepted and Agreed to by:

The Board of Education of the Cincinnati City School District

By: _____
Eve Bolton, President

And By: _____
Diana C. Whitt, Treasurer

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Eve Bolton, President of The Board of Education of the Cincinnati City School District, an Ohio political subdivision, on behalf of the political subdivision.

Notary Public
My commission expires: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Diana Whitt, Treasurer of The Board of Education of the Cincinnati City School District, an Ohio political subdivision, on behalf of the political subdivision.

Notary Public
My commission expires: _____

This instrument prepared by:
Andrea E. Yang
City of Cincinnati Law Department
801 Plum Street, Suite 214
Cincinnati, Ohio 45202

EXHIBIT A
to
Quit Claim Deed
(City Improvements at Taft Elementary)

LEGAL DESCRIPTION OF CPS PROPERTY

[TO BE ATTACHED]

EXHIBIT F
to Real Estate Exchange Agreement

Form of Mt. Auburn Pool Lease

[see attached]

----- space above for Recorder's Office -----

City Contract No. _____

LEASE AGREEMENT

(Swimming Pool, Locker Room and Parking Area at Taft Elementary School)

This Lease Agreement ("**Lease**") is made and entered into effective as of the Effective Date (as defined on the signature page hereof) by and between **THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT**, the address of which is 2651 Burnet Avenue, Cincinnati, OH 45219 ("**Landlord**"), and the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Lease is Cincinnati Recreation Commission, 805 Central Avenue, Suite 800, Cincinnati, Ohio 45202 (the "**City**").

Recitals:

A. Landlord owns certain real property located at 270 Southern Avenue, Cincinnati, OH 45219 in the Mt. Auburn neighborhood (Hamilton County Auditor's parcel ID Nos. 87-6-2, 3, 4, 87, 89, 90, 91, 92, 94 & 107, and 88-7-23, 24, 25, 44 & 137) as described on Exhibit A (*Legal Description of Property*) hereto (the "**Property**"), including the school building thereon commonly known as the Taft Elementary School (the "**Building**").

B. In or around 1975, the City, with Landlord's consent, constructed, as part of a larger addition to the Building, an indoor swimming pool and locker room of approximately 5,100 sf on the lower level of the Building as depicted on Exhibit B (*Site Plan Showing Leased Premises*) hereto (the "**Pool Area**"). From the time of construction until the present, the City has used the Pool Area for public recreation purposes and recently invested over \$1,265,000 (including \$740,264 for structural bracing, renovation of the locker rooms and pool entry area and handicapped entry, \$439,000 for pool renovation, wall bracing, repairs and pool lift, \$227,355 for HVAC, \$30,000 for cathodic protection, and entry) in renovating the Pool Area improvements.

C. Pursuant to a certain *Real Estate Exchange Agreement* between Landlord and the City dated _____, 2014 (the "**Swap Agreement**"), the City conveyed to Landlord all of the City's right, title and interest in the addition, including the Pool Area improvements by a Quit Claim Deed dated _____, 2014 and recorded in Official Record ____, Page ____, Hamilton County, Ohio Records. The Swap Agreement provides for Landlord to lease the Pool Area back to the City for a term of twenty (20) years.

D. In addition to leasing the Pool Area back to the City, the Swap Agreement provides that Landlord will lease to the City, for its exclusive use in conjunction with the Pool Area, the lower level parking lot adjacent to the Pool Area containing approximately 20 spaces as depicted on Exhibit B ("**Parking Lot Premises**"; the Pool Area and the Parking Lot Premises being referred to collectively herein as the "**Leased Premises**").

Now therefore, the parties agree as follows:

1. LEASED PREMISES. Subject to the terms and conditions set forth herein and to any and all existing easements and restrictions of record, Landlord hereby leases the Leased Premises to the City, and the City hereby leases the Leased Premises from Landlord. In addition, Landlord grants to the City, its employees and

visitors, the non-exclusive right to use all common areas outside the Building (e.g., driveways and walkways) for ingress/egress to the Leased Premises at no charge to the City. The City shall not do anything to materially interfere with the rights of others to use such areas.

2. **TERM.** The initial term (“**Initial Term**”) of this Lease shall be twenty (20) years and shall commence on the Effective Date and, unless sooner terminated as herein provided, shall expire on the day immediately preceding the twentieth (20th) anniversary thereof (each consecutive 12-month period during the Term being sometimes referred to herein as a “**Lease Year**”). Unless either Landlord or the City provides a written notice of non-renewal to the other party at least six (6) months prior to the end of the Initial Term or, if applicable, at least six (6) months prior to the end of the first renewal period, and provided that the City is not then in default under this Lease beyond any applicable notice and cure period provided for herein, the Term of this Lease shall automatically be extended for two (2) additional periods of ten (10) years each (each, a “**Renewal Term**”) on the same terms and conditions as herein provided. As used herein, the “**Term**” of this Lease means the Initial Term and, if applicable, the Renewal Term(s).

3. **RENT.** \$0.00.

4. **CONDITION OF THE LEASED PREMISES/OBLIGATIONS OF LANDLORD.** The City acknowledges that it has been operating the Pool Area and has had use of the Parking Lot Premises prior to the Effective Date; therefore, the City accepts the Leased Premises, including the building systems therein, in AS-IS condition. Landlord makes no warranties as to the condition of the Leased Premises.

5. **OBLIGATIONS OF THE CITY.**

5.1 **Use of Leased Premises.** The City shall occupy and use the Leased Premises continuously throughout the Term. The City shall use the Leased Premises for public recreation center purposes, and for no other purpose except with the prior written consent of Landlord. The foregoing notwithstanding, if the City does not receive an appropriation of funds to properly operate the Leased Premises, the City may close the Leased Premises, in whole or in part, during such period or periods of time during which the City lacks sufficient funding for its proper operation. However, if following the end of the twentieth (20th) Lease Year, the City (i) ceases to use the Leased Premises for three (3) consecutive years or more, and (ii) has not resumed use of the Leased Premises, Landlord shall have the right to terminate this Lease, upon thirty (30) days written notice to the City, whereupon Landlord shall pay the City for the Unamortized Improvement Value of the Pool Area improvements constructed by the City as described in Section 6.2 hereof.

5.2 **Alterations.** During the Term, the City may, at its option and expense, make such capital improvements to the Leased Premises as the City from time to time deems necessary or appropriate; provided, however, that if the City desires to make improvements costing more than \$50,000 (per construction project), the City shall deliver plans for such improvements to Landlord, and Landlord shall have thirty (30) days to notify the City in writing of its approval or disapproval thereof, such approval not to be unreasonably withheld, however, Landlord may decline to approve the City’s plans if Landlord intends to exercise its termination rights under Section 6.2. If Landlord does not deliver any notice within such 30-day period, such plans shall be deemed approved. The City shall not permit any liens to attach to the Leased Premises by virtue of the City’s improvements.

5.3 **Compliance with Laws and Regulations.** The City shall comply with all laws, regulations and orders of any governmental authority with respect to the Leased Premises.

5.4 **Utilities and Services.** The parties acknowledge that the utilities for the Pool Area are separately metered. The City will be responsible for all utilities serving the Leased Premises.

5.5 **Care of Leased Premises.** The City, at its expense, shall maintain the Leased Premises in good condition and repair, including removal of snow, ice and debris from the Parking Lot Premises, and shall commit no waste therein or damage thereto, normal wear and tear excepted.

5.6 Common Areas & Dumpster. With the exception of the Parking Lot Premises, Landlord shall maintain all driveways, walkways and parking areas near the Building in a continuous state of good and safe condition and repair, including without limitation removing snow, ice and debris. In addition, the City is permitted to dispose of waste using Landlord's dumpster(s) for the Building, however the City's use of Landlord's dumpster shall be limited to waste generated within the Leased Premises.

5.7 Taxes and Assessments. Landlord shall pay when due all real estate taxes and assessments levied upon or otherwise allocable to the Building, including the Leased Premises. The City shall cooperate with Landlord in any applications or other procedures requesting exemption of the Leased Premises from real estate taxes.

5.8 Assignment and Subletting. The City shall not assign its interests under this Lease to a third party without the prior written consent of Landlord; provided, however, that the City shall have the right, without having to obtain Landlord's consent, to sublease space within the Leased Premises to third parties provided that the third parties' use of such space is compatible with the City's permitted hereunder. No such sublease shall extend beyond the Term of this Lease.

5.9 Outdoor Signs. Subject to zoning regulations, the City shall have the right to place and maintain a reasonable number of identification and directional signs outside the Building, subject to Landlord's reasonable approval as to the location, size, design, and overall appearance.

6. LANDLORD'S RIGHT OF EARLY TERMINATION.

6.1 Early Termination. Notwithstanding any other provision of this Lease to the contrary, Landlord shall have the right to terminate this Lease early, effective as of the end of any Lease Year, if Landlord determines that the Leased Premises are needed for school purposes (the "**Early Termination**"). Landlord may exercise the Early Termination by giving the City written notice thereof at least one (1) year prior to the effective date of the Early Termination (the "**Termination Date**"). On or before the Termination Date, the City shall vacate the Leased Premises and remove all of its equipment and personal property and shall deliver the Leased Premises to Landlord in the same condition as is otherwise required at the expiration of the Term. Notwithstanding any other provision of this Lease, this right of termination is personal to Landlord and shall not run with the land or otherwise be exercisable by Landlord's successors or assigns.

6.2 Reimbursement of City's Improvement Value Upon Early Termination. If Landlord exercises the Early Termination, then, within thirty (30) days after the Termination Date, Landlord shall pay to the City an amount equal to the then unamortized value of the existing and future Pool Area improvements constructed by the City (the "**Unamortized Improvement Value**"), calculated as provided in this Section 6.2. The parties hereby agree that the appraised value of the existing Pool Area improvements as of the Effective Date (being the "**Benchmark Date**" for the existing Pool Area improvements) is \$1,265,000 (being the "**Benchmark Improvement Value**" of the existing Pool Area improvements). Within 30 days after the City completes additional capital improvements costing more than \$50,000 (per construction project), the City shall provide Landlord with a copy of its appraised report showing the appraised value thereof (being the Benchmark Improvement Value for such additional improvements, with the year in which such improvements were substantially completed being the Benchmark Date for such additional improvements).

The Unamortized Improvement Value of the City's Pool Area improvements shall be calculated by multiplying the Benchmark Improvement Value for such improvements by the percentage listed on the schedule below associated with the number of years between the Termination Date and the Benchmark Date for such improvements (that is, the year in which the Termination Date occurs minus the applicable Benchmark Date). By way of example, if the City makes additional improvements in 2017 (being the Benchmark Date for such improvements), the Benchmark Improvement Value for such improvements is \$1,000,000, and the Termination Date is in 2027, then the Unamortized Improvement Value for such improvements would be calculated by multiplying the

percentage value for Year 10 (being 2027 minus 2017), which is 50%, by \$1,000,000.00, for an Unamortized Improvement Value of such improvements of \$500,000.

Year 1	95%		Year 11	45%
Year 2	90%		Year 12	40%
Year 3	85%		Year 13	35%
Year 4	80%		Year 14	30%
Year 5	75%		Year 15	25%
Year 6	70%		Year 16	20%
Year 7	65%		Year 17	15%
Year 8	60%		Year 18	10%
Year 9	55%		Year 19	5%
Year 10	50%		Year 20	0%

Landlord shall have thirty (30) days from receipt of each appraisal report from the City to contest the City's appraisal by providing an independent professional appraisal; whereupon the average of the two appraised values shall be deemed to be the Benchmark Improvement Value for such improvements. If Landlord does not contest the City's appraisal within such 30-day period, the Benchmark Improvement Value shall be deemed conclusively established by the City's appraisal.

7. RIGHTS RESERVED TO LANDLORD. Landlord shall have the right to enter the Leased Premises at any reasonable time to perform its obligations under this Lease, all of which shall be done in a manner designed to minimize interference with the City's use of the Leased Premises. Landlord shall exercise reasonable care to avoid damage to the Leased Premises and the City's personal property therein. Landlord shall promptly repair, at Landlord's sole expense, any and all damage to the Leased Premises and the City's personal property caused by entry upon the Leased Premises by Landlord, its agents, employees, contractors and other entering the Leased Premises upon Landlord's request or with Landlord's permission.

8. INSURANCE. Landlord acknowledges that the City is a municipal corporation, that the City does not maintain commercial insurance coverage, and that the City is self insured. The City shall provide Landlord with a self insurance letter from the City's Risk Management Division upon Landlord's request. Throughout the Term, the City shall satisfy all applicable requirements of Ohio's workers compensation laws. Landlord may, in its sole discretion, maintain fire and extended coverage on the Building, but excluding the City's personal property. All of the City's personal property placed in or about the Leased Premises shall be at the City's sole risk. The City shall give immediate notice to Landlord in case of fire or other casualty or in the event of serious accidents occurring at the Leased Premises.

9. EMINENT DOMAIN OR CASUALTY.

9.1 Eminent Domain. If during the Term, all of the Leased Premises are taken for any public or quasi-public use under any law, ordinance, or regulation or by right of eminent domain, or sold to the condemning authority under threat of condemnation, this Lease shall terminate effective as of the date of the taking of the Leased Premises by the condemning authority. If less than all of the Leased Premises are taken for any public or quasi-public use under any law, ordinance, or regulation or by right of eminent domain, or sold to the condemning authority under threat of condemnation, this Lease shall not terminate except at the written request of the City. Landlord and the City shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any such proceedings. The termination of this Lease under this paragraph shall not affect the rights of the respective parties to such awards. Landlord shall include the City in settlement negotiations with a condemning authority attempting to acquire all or part of the Leased Premises,

and shall have the City joined as a party to any condemnation suit filed to appropriate any part of the Leased Premises.

9.2 Fire and Casualty. If the Leased Premises are damaged, destroyed, or rendered unfit for occupancy as a result of fire or other casualty, the City may elect, by giving written notice to Landlord within one hundred eighty (180) days after the casualty date, to terminate this Lease. The City shall remove all of its personal property from the Leased Premises, shall vacate and surrender possession thereof to Landlord on the effective date of termination as specified in the City's notice, and shall thereafter have no obligations or liability under this Lease.

9.3 Force Majeure. If Landlord or the City are unable to fulfill any of their respective obligations under this Lease or are delayed in fulfilling such obligations by reason of strike, lockout or labor dispute, lack or failure of customary sources of supply of fuel, labor and materials, or due to any other cause beyond their reasonable control, including without limitation national emergency, any law of governmental rule, order or regulation, war, civil commotion, riot, interference by civil or military authorities, fire or other casualty or act of God (all of the foregoing being examples of force majeure), neither party shall be deemed in default under this Lease by reason of such inability or delay in performing their respective obligations.

10. DEFAULTS AND REMEDIES.

10.1 Default by the City. If the City fails to pay any sum, perform any act, or comply with any condition or covenant contained herein on the City's part to be paid, kept or performed, and such failure continues for a period of sixty (60) days after the City's receipt of written notice from Landlord, the same shall constitute a default of the City under this Lease; provided that such period shall be extended for the period of time reasonably necessary to cure such failure so long as the City promptly commences such cure within such 60-day period and thereafter diligently prosecutes such cure to completion.

10.2 Remedies of Landlord. In the event of any default of the City as provided in Section 10.1 above, Landlord shall have the right to terminate this Lease by giving written notice thereof to the City, which notice shall specify a date on which this Lease shall terminate (which shall not be less than 90 days following the City's receipt of such notice), and upon such date, this Lease shall terminate, without limitation of any other rights and remedies to which Landlord may be entitled at law or in equity.

11. BROKER. The parties represent and warrant that no broker negotiated or was instrumental in negotiating or consummating this Lease and that no commission is owed by either party to any broker or real estate agent.

12. LANDLORD'S SUCCESSORS. Except as otherwise provided in this Lease, if Landlord sells or otherwise transfers its interest in the Leased Premises and under this Lease, such transferee shall assume all covenants and obligations of Landlord under this Lease subsequent to such transfer, and thereafter Landlord shall be entirely released with respect to such covenants and obligations.

13. MISCELLANEOUS PROVISIONS.

13.1 Right of Quiet Enjoyment. If the City shall perform all covenants and agreements herein provided to be performed by the City, the City shall, at all times during the Term, have the peaceable and quiet enjoyment of possession of the Leased Premises, free of hindrance and molestation by Landlord, subject to the provisions of this Lease.

13.2 Subordination. Landlord represents and warrants to the City that there are presently no mortgages or other liens on the Leased Premises. The City agrees that this Lease and the City's interest herein shall be subordinate to any mortgage hereafter placed against the Leased Premises, and to all renewals, modifications, replacements, consolidations and extensions thereof, and to any and all advances made thereunder and the interest thereon so long as Landlord shall obtain from each mortgagee holding a mortgage to which this Lease is

subordinate, a written document in recordable form delivered to the City that provides that notwithstanding any foreclosure under such mortgage, the City's possession of the Leased Premises shall not be disturbed nor shall the City's rights be diminished or its obligations increased so long as the City is not in default hereunder beyond the applicable notice and grace periods given the City for rectification thereof. The receipt by the City of such document from such mortgagee shall be a condition to the subordination effected by this Section. Upon request of Landlord, the City agrees to execute and deliver any and all reasonable documents subordinating its rights under this Lease, as aforesaid.

13.3 Estoppel Certificates. Upon the request of the other party, each party agrees to execute an estoppel certificate certifying as to such facts and other matters pertaining to this Lease as the other party may reasonably request.

13.4 Rights of Assigns. Except where specifically limited, the rights and liabilities of the parties hereto shall run to the benefit of and shall be binding upon the personal representatives, heirs, designees, assigns and successors in interest of Landlord and the City.

13.5 Surrender; Holding Over. At the end of the Term, the City shall surrender the Leased Premises to Landlord. Unless Landlord notifies the City otherwise at the end of the Term, any holdover by the City shall create a tenancy from month-to-month on the same terms and conditions as set forth in this Lease. Either party may terminate such month-to-month tenancy by giving 30 days' prior written notice to the other party.

13.6 Waiver. The non-defaulting party's acceptance of performance by the defaulting party of the defaulting party's obligations under this Lease shall not be construed as a waiver of such default or of the non-defaulting party's right to exercise any of its rights and remedies under this Lease on account of such default, nor shall any delay in exercising any such right operate as a waiver thereof. No waiver of any obligation under this Lease shall be construed as a waiver of such obligation on any subsequent occasion.

13.7 Notice. All notices required to be given hereunder by either party shall be in writing and personally delivered, sent by Federal Express or other recognized overnight courier that in the ordinary course of business maintains a record of each delivery, or mailed by U.S. certified mail, postage prepaid, return receipt requested, addressed to the parties at the following addresses:

To Landlord:

Cincinnati Public Schools
P.O. Box 5381
Cincinnati, OH 45201-5381
Attn: COO

With a copy to:

Cincinnati Public Schools
2315 Iowa Street
Cincinnati, OH 45206
Attn: General Counsel

To the City:

Cincinnati Recreation Commission
805 Central Avenue, Suite 800
Cincinnati, OH 45202
Attn: Director

Notices shall be deemed to have been given on the date of receipt if personally delivered, on the following business day if sent by an overnight courier, and on the date noted on the return receipt if mailed by U.S. certified mail. If Landlord sends a notice to the City alleging that the City is in default under this Lease, Landlord shall

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Diana C. Whitt, Treasurer of THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT, on its behalf.

Notary Public
My commission expires: _____

CITY OF CINCINNATI

By: _____
 Scott Stiles, Interim City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Scott Stiles, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Christopher Bigham, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
 Reginald Zeno, City Finance Director

This instrument prepared by:
Andrea Yang
Office of the City Solicitor
City of Cincinnati
801 Plum Street
Cincinnati, OH 45202

EXHIBIT A
to
Lease Agreement

Legal Description of Property

SEE ATTACHED

EXHIBIT B
to
Lease Agreement

Site Plan Showing Leased Premises

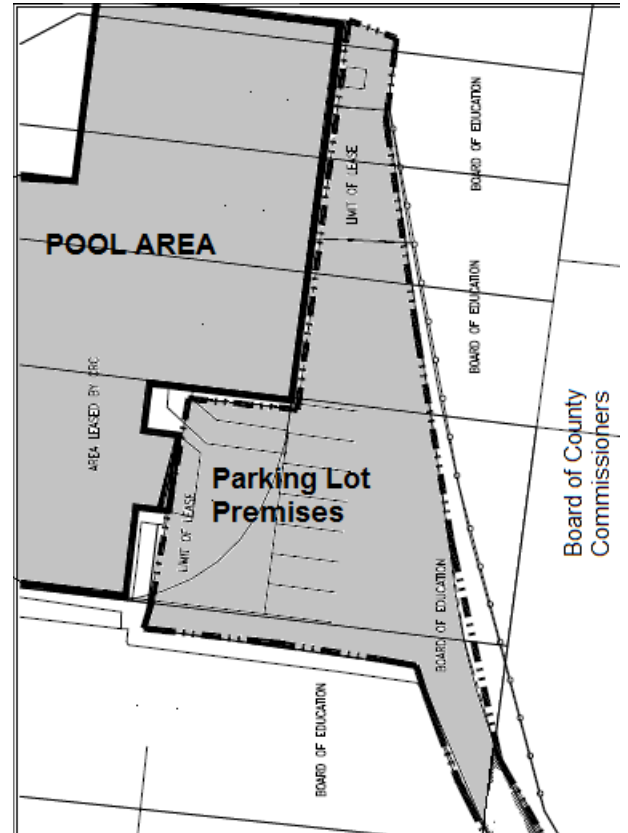
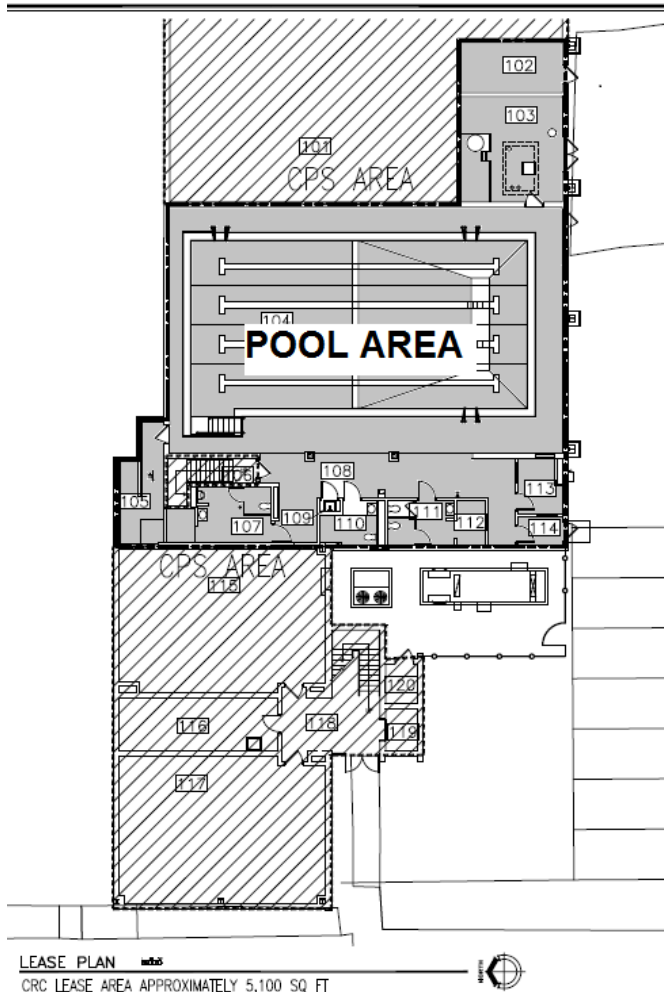


EXHIBIT G
to Real Estate Exchange Agreement

Form of Quebec Heights Deed

[see attached]

----- space above for Recorder's Office -----

QUIT CLAIM DEED
(Former Quebec Heights School Site-1655 Ross Avenue)

THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT, a city school district organized under the laws of the State of Ohio, for valuable consideration paid, hereby grants and conveys to the CITY OF CINCINNATI, an Ohio municipal corporation, whose tax mailing address is 801 Plum Street, Cincinnati, Ohio 45202, all of the grantor's right, title and interest in and to the following described real property:

See Exhibit A (*Legal Description*) hereto (also depicted on Exhibit B (*Site Plan*) hereto)

Address: 1655 Ross Avenue
Auditor's Parcel ID: 204-14-186 & 199; and 204-19-43, 53, 54, 56 & 57
Prior Instruments: [to be inserted]

Executed by the grantor on _____, 2014.

**The Board of Education of the
Cincinnati City School District**

By: _____
Eve Bolton, President

And By: _____
Diana C. Whitt, Treasurer

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Eve Bolton, President of The Board of Education of the Cincinnati City School District, an Ohio political subdivision, on behalf of the political subdivision.

Notary Public
My commission expires: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Diana Whitt, Treasurer of The Board of Education of the Cincinnati City School District, an Ohio political subdivision, on behalf of the political subdivision.

Notary Public
My commission expires: _____

ACCEPTED BY:

CITY OF CINCINNATI

By: _____
Scott Stiles, Interim City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Scott Stiles, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Chris Bigham, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
Andrea Yang
Office of the City Solicitor
City of Cincinnati
801 Plum Street
Cincinnati, OH 45202

EXHIBIT A
to
Quit Claim Deed
(Former Quebec Heights School Site)

LEGAL DESCRIPTION

[TO BE ATTACHED]

EXHIBIT B
to
Quit Claim Deed
(Former Quebec Heights School Site)

SITE PLAN

[TO BE ATTACHED]

EXHIBIT H
to Real Estate Exchange Agreement

Form of Clifton Easement

[see attached]

----- space above for recorder's office -----

GRANT OF EASEMENT

(Probasco Fountain Plaza @ Old Clifton School, 3711 Clifton Avenue)

This Grant of Easement is made as of this ____ day of _____, 2014 by **THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL DISTRICT**, a city school district organized under the laws of the State of Ohio, the address of which is 2651 Burnet Avenue, Cincinnati, Ohio 45219 ("**Grantor**"), in favor of the CITY OF CINCINNATI, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 ("**Grantee**").

RECITALS:

A. By virtue of a deed recorded in Deed Book 909, Page 213, Hamilton County, Ohio Recorder's Office, Grantor is the owner of the land and improvements commonly known as Old Clifton School, located at 3711 Clifton Avenue, Cincinnati, Ohio 45220 (Hamilton County Auditor's No. 215-67-6), as described on Exhibit A (*Legal Description of School Property*) and depicted on Exhibit D (*Site Plan*) hereto (the "**School Property**"). Grantor leases the eastern portion of the School Property, including the Old Clifton School building, to the Clifton Cultural Arts Center ("**Lessee**") pursuant to a Lease Agreement dated January 27, 2006, to operate as a cultural arts center.

B. Grantee is the owner of the historic Probasco Fountain and related fixtures and utilities, including a water meter pit (the "**Fountain**"), currently located within the City-owned Clifton Avenue right-of-way adjacent and to the east of the School Property.

C. Grantee desires to: (i) relocate the Fountain westward to increase the clearance between the Fountain and vehicles on Clifton Avenue; and (ii) construct an improved public space, including sidewalks, benches, paving, planters, lighting, landscaping, and associated improvements around the Fountain (the "**Plaza Improvements**") dedicated to public use as depicted in Exhibit D (the "**Project**").

D. Upon completion, a portion of the Fountain and the Plaza Improvements will encroach upon a portion of the School Property, for which Grantee has requested an easement for purposes consistent with the Permitted Uses (as hereinafter defined).

E. City Planning Commission, having control over the location and relocation of statuary and other works of art belonging to the City, approved the relocation of the Fountain to the proposed site on the School Property at its meeting May 2, 2014.

F. City Council has authorized funding the Project from project number _____ pursuant to City Council Ordinance #_____, passed on _____, 2014.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant. Grantor hereby grants to Grantee a permanent easement over the Easement Area (as defined below) for the follow purposes (the “**Permitted Uses**”): (i) for the demolition, relocation, reconstruction, operation, maintenance, repair, replacement, and modification of the Fountain and Plaza Improvements, at Grantee’s sole expense (the “**Work**”), and (ii) for public use of the Easement Area. Grantee shall perform the Work in a safe and workmanlike manner and in compliance with all applicable laws. Grantee shall not restrict the public use of the Easement Area except as is necessary for Grantee to safely perform the Work. Grantee shall be permitted to grant access to the Easement Area to its contractors and subcontractors and to utility companies and their contractors and subcontractors in order to perform the Work. The easement area shall mean the approximately 1,146 square foot area of land located in the northeast corner of the School Property as depicted on Exhibit B (*Plat of Easement Area*) and more particularly described on Exhibit C (*Legal Description of Easement Area*) hereto (the “**Easement Area**”).

2. Grantor Covenants. Grantor covenants and agrees that it: (i) shall keep the Easement Area clear of all obstructions that may interfere with the Permitted Uses; and (ii) except as provided herein, shall not permit any excavation to occur within the Easement Area or permit any other activities to occur therein that would likely cause damage to the Fountain or Plaza Improvements. Grantee shall be permitted to remove all unauthorized obstructions and to take all reasonable measures to protect the Fountain and Plaza Improvements from damage.

3. Maintenance/Repair. Grantee shall be responsible, at its sole expense, for the proper maintenance and repair of the Fountain and Plaza Improvements. Grantee shall, at its sole expense, backfill and restore in a workmanlike manner those portions of the School Property outside the Easement Area disturbed by the Work, to as near as practicable the condition that existed prior to commencement of the Work.

4. Covenants Running with the Land. The provisions hereof shall “run with the land” and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors-in-interest.

5. Exhibits. The following Exhibits are attached hereto and made a part hereof:
Exhibit A - *Legal Description of School Property*
Exhibit B - *Plat of Easement Area*
Exhibit C - *Legal Description of Easement Area*
Exhibit D - *Site Plan*

[Signature Pages Follow]

Executed by the Grantor on the date of acknowledgements indicated below.

THE BOARD OF EDUCATION OF THE
CINCINNATI CITY SCHOOL DISTRICT

By: _____
Eve Bolton, President

And By: _____
Diana C. Whitt, Treasurer

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014
by Eve Bolton, President of THE BOARD OF EDUCATION OF THE CINCINNATI CITY SCHOOL
DISTRICT, on its behalf.

Notary Public
My commission expires: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014
by Diana C. Whitt, Treasurer of THE BOARD OF EDUCATION OF THE CINCINNATI CITY
SCHOOL DISTRICT, on its behalf.

Notary Public
My commission expires: _____

ACCEPTED BY:

CITY OF CINCINNATI

By: _____
Scott Stiles, Interim City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Scott Stiles, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Gerald Checco, Interim Director
Department of Public Services, City of Cincinnati

Approved as to Form:

Assistant City Solicitor, City of Cincinnati

This instrument prepared by:
Eric E. Landen, Esq.
Frost Brown Todd LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, OH 45202
(513) 651-6800

CONSENT BY LESSEE

Clifton Cultural Arts Center, an Ohio non-profit cultural organization, as defined in Ohio Revised Code § 3381.01 (the “**Lessee**”), hereby consents to the foregoing Grant of Easement (the “**Easement**”) and subordinates that certain *Lease Agreement* between the Lessee and The Board of Education of the Cincinnati City School District (f/k/a The Board of Education of the City School District of the City of Cincinnati), as Lessor, dated January 27, 2006 and recorded in Official Record Book 10219, Page 638 of the Hamilton County, Ohio Recorder’s Office, to the Easement as fully and completely as if the Easement had been executed and recorded prior to the *Lease Agreement*. This Consent shall be binding upon the undersigned Lessee and its successors and assigns.

CLIFTON CULTURAL ARTS CENTER,
an Ohio non-profit cultural organization

By: _____

Print Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014,
by _____, the duly authorized _____ of the
Clifton Cultural Arts Center, an Ohio non-profit cultural organization, on behalf of the organization.

Notary Public
My commission expires: _____

EXHIBIT A
to
Grant of Easement

Legal Description of School Property

All that tract of land situated at the northwest corner of Clifton and Central Avenues in what was formerly Village of Clifton, but is now City of Cincinnati, Hamilton County Ohio, described as follows: Beginning at the point of intersection of centers of said Avenues; thence extending northwardly along the center of Clifton Avenue two hundred and fifty-eight (258) feet six (6) inches to line of Edward Rawson's land; thence westwardly and parallel with the south boundary of the tract and with the line of Mr. Rawson's land five hundred and six eighty-five one hundredths (506.85) feet; thence southwardly and parallel with the East line two hundred and fifty eight (258) feet six (6) inches to the center of Central Avenue and thence Eastwardly along the center of said last named Avenue five hundred and six eighty-five one hundredths (506.85) feet to the center of Clifton Avenue to the place of beginning, containing three or more acres of land.

Being of record in the Hamilton County Auditor's Office as Parcel 6, Page 67, Book 215.

EXHIBIT B
to
Grant of Easement

Plat of Easement Area

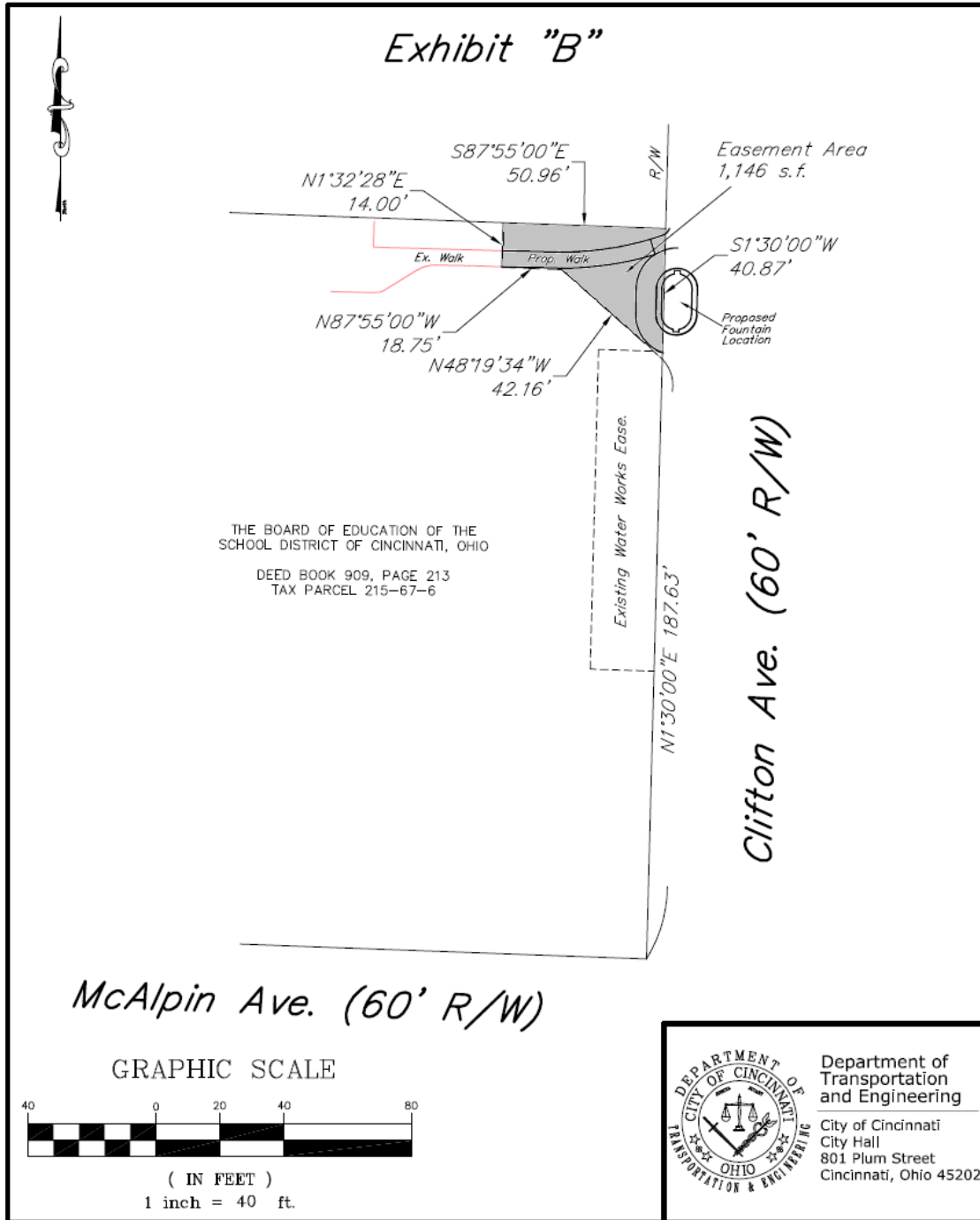


EXHIBIT C
to
Grant of Easement

Legal Description of Easement Area

Situate in Section 21, Town 3, Fractional Range 2, Millcreek Township, City of Cincinnati, Hamilton County Ohio and being more particularly described as follows:

Beginning at the intersection of the north line of McAlpin Avenue and, 60' R/W and the west line of Clifton Avenue, 60' R/W; measure with said Clifton Avenue North 01°30'00" East, 187.63 feet to the Place of Beginning; thence North 48°19'34" West, 42.16 feet to a point; thence North 87°55'00" West, 18.75 feet to a point; thence North 01°32'28" East, 14.00 feet to a point; thence South 87°55'00" East, 50.96 feet to a point in said Clifton Avenue; thence South 01°30'00" West, 40.87 feet to the Place of Beginning. Containing 1,146 square feet of land, more or less. Bearings are based on D.B. 909, Pg. 213 H.C.R.O.

EXHIBIT D
to
Grant of Easement

Site Plan

