

**CATANIA & PARKER, L.L.P.**  
ATTORNEYS - AT - LAW

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230 N. Monroe St., 2<sup>nd</sup> Fl  
Media, PA 19063

April 5, 2019

VIA EMAIL ONLY

[dmcgarry@upperdarbysd.org](mailto:dmcgarry@upperdarbysd.org)

Dr. Daniel P. McGarry, Superintendent  
Upper Darby School District  
4611 Bond Avenue  
Drexel Hill, PA 19026

RE: Borough of Clifton Heights Athletic Fields ("Athletic Fields")

Dear Dan,

I am the Solicitor for the Borough of Clifton Heights.

Borough Manager John Perfetti has received a number of inquiries from long term Borough residents who remember that restrictions for recreation only were placed on the use of the Athletic Fields. In order to determine if use restrictions existed Mr. Perfetti ordered a title search done on the entire field property, at a cost to the Borough in excess of \$500.00. At its meeting last night Borough Council directed me to share with you the results of the title search.

The County tax map makes it appear that the Athletic Fields are comprised of two parcels. (Copy attached.) The section to the left is commonly known as the Moyerman-Gibson Tract which is described in one deed and the balance of the property (hereinafter "Right Side Parcel") may consist of as many as nine deeds for which our title company could not find the deed vesting title into Upper Darby School District.

For the Right Side Parcel, the title search revealed a number of unresolved issues, such as there is no current deed on file with the Recorder of Deeds for the Right Side Parcel, there is a course and distance missing from the legal narrative from an earlier deed, and there are at least two paper streets referenced in other earlier deeds. The Borough has not checked the status of the paper streets.

For the Moyerman-Gibson Tract the results of the title search did reveal a deed restriction as detailed in the attached 1966 deed. The 1966 deed clearly contains restrictions as set forth in the attached memo and there is no evidence the restrictions have been extinguished despite the fact that the deed restrictions were not specifically detailed in the short form 1977 deed. (Copies attached.) Additionally, the restriction for municipal use does not necessarily mean school use. The Grantor that created and imposed the use restriction was a School District and if they wanted to restrict for school purposes only, wouldn't they have specifically said so? These open and unresolved questions give potential legal standing to parties who wish to enforce a strict reading of these restrictions which would be an impediment to the School District's announced plans.

Borough Council authorized me to inform the School District that these deed restriction issues and these title issues, and any other issues which may exist, need to be resolved before any application(s) is presented to the Borough Council or to the Borough Zoning Hearing Board. The Borough cannot decide the correct interpretation of the deed restriction or whether they continue to apply and without these issues being resolved by a court of competent jurisdiction before plans are presented any application could not be properly reviewed and considered by the Borough.

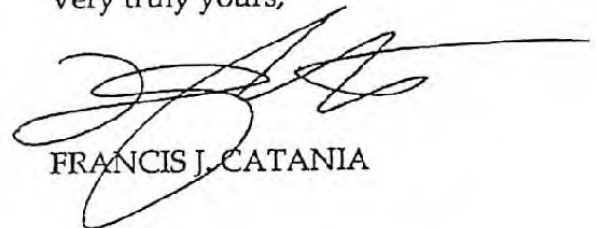
Since the Borough cannot legally resolve the deed restriction and title issues Council wanted me to call these matters to your attention as soon as they were discovered so the School District can endeavor to get the issues resolved in the proper forum before any more residents tax dollars are expended. Consequently the Borough Council directed me to share its due diligence with you to allow the School District to address these legal issues at the earliest possible time.

Hopefully the School District is aware of these deed restrictions and title issues and the issues have already been addressed.

Congratulations on your new position.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Francis J. Catania', with a long horizontal flourish extending to the right.

FRANCIS J. CATANIA

Attachments (11 pgs.)  
FJC\jlr  
Cc: Borough Manager  
Clifton Heights Zoning Hearing Board





Moyerman-Gibson Tract known as the CH Athletic Field

Chain of Title

1966            Bk/Pg   2256/997

Grantor:      School District of Borough of Clifton Heights

Grantee:      Borough of Clifton Heights

(Springfield Road, Area of 6.6672 acres)

Book 2256/Page 998            "the condition that the aforesaid premises be used by said Borough of Clifton Heights for recreational and/or municipal purposes and for no other purpose."

Book 2256/Page 999            See highlighted warranty language "shall and will forever WARRANT and forever DEFEND".

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1977            Bk/Pg   2635/1016

Grantor:      Borough of Clifton Heights

Grantee:      Upper Darby School District

Containing area of 6.6672 acres.

Short Form Deed.

No warranty language.



# This Indenture

Made the 11<sup>th</sup>

day of October in the year of our Lord one thousand nine hundred and sixty-six (1966). — Between — SCHOOL DISTRICT OF BOROUGH OF CLIFTON HEIGHTS, in the County of Delaware and Commonwealth of Pennsylvania,

(hereinafter called the Grantor —), of the one part, and — BOROUGH OF CLIFTON HEIGHTS, a municipal corporation, existing by and under the laws of the Commonwealth of Pennsylvania, in County of Delaware and Commonwealth of Pennsylvania, (hereinafter called the Grantee —), of the other part;

**Witnesseth**, That the said Grantor — for and in consideration of the sum of One (\$1.00) Dollar lawful money of the United States of America, unto — it — well and truly paid by the said Grantee — at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has — granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents do es — grant, bargain, sell, alien, enfeoff, release and confirm unto the said Grantee, its successors — and Assigns,

— ALL THOSE CERTAIN tracts or parcels of land, SITUATE in the Borough of Clifton Heights, County of Delaware, State of Pennsylvania, as shown on a plan of property for Clifton Heights School District, prepared by Damon and Foster, Civil Engineers, Sharon Hill, Pennsylvania, dated January 18, 1952, being bounded and described as follows:

— BEGINNING at a point of intersection of the centerline of Springfield Road, Fifty (50) feet wide; with the Southwesterly side of Church Avenue, (an unopened Sixty (60) feet wide street), extended; thence, along the centerline of said Springfield Road, North eighty-two (82) degrees, twenty-seven (27) minutes West, Three hundred eighty-five and thirty-seven one-hundredths (385.37) feet to a point; thence, leaving same, North seventeen (17) degrees fifteen (15) minutes West, Twenty-seven and fifty-four one-hundredths (27.54) feet to a point in the Northerly side of said Springfield Road; thence, along same, North eighty-two (82) degrees twenty-seven (27) minutes West, Three hundred eighty-five and sixty-eight



one-hundredths (385.68) feet to a point; the intersection of said Springfield Road, with the Northeastern side of Oak Avenue, Sixty (60) feet wide; thence, along said Oak Avenue, North seventeen (17) degrees fifteen (15) minutes West, One hundred thirty-five and fifty-one one-hundredths (135.51) feet to a point; thence, leaving same, North seventy-two (72) degrees forty-five (45) minutes East, Three hundred fifty (350) feet to a point; thence, North seventeen (17) degrees fifteen (15) minutes West, One hundred thirty-one and seventy-nine one-hundredths (131.79) feet to a point; thence, North one (01) degree fifty (50) minutes West, Ninety-six and sixty-five one-hundredths (96.65) feet to a point; thence, North seventy-two (72) degrees forty-five (45) minutes East, One hundred fifty-six and eighty-nine one-hundredths (156.89) feet to a point; thence, South eighty-six (86) degrees forty-five (45) minutes East, One hundred seventy-nine and ninety-seven one-hundredths (179.97) feet to a pipe in the said side of unopened Church Avenue; thence, along same, South seventeen (17) degrees ten (10) minutes East, Six hundred forty-eight and thirty-five one-hundredths (648.35) feet to the first mentioned point and place of beginning.

— CONTAINING an area of 6.6672 Acres. —

— UNDER AND SUBJECT nevertheless to the condition that the aforesaid premises be utilized by said Borough of Clifton Heights for recreational and/or municipal purposes and for no other purpose.

— BEING, a part thereof, the same premises which Samuel Moyerman and Anna D. Moyerman, his wife, by Indenture dated 25 June 1952, and recorded at Media, Pennsylvania, in the Office of the Recorder of Deeds, the first thereof in Deed Book No. 1619, page 408, and the second in Deed Book No. 1615, page 100, and

— BEING, a part thereof, the same premises which Anabelle J. Gibson, Singlewoman, by Indenture dated 20 February 1952, and recorded at Media, Pennsylvania, in the Office for the Recorder of Deeds in Deed Book No. 1530, page 143, granted and conveyed to School District of Borough of Clifton Heights, in fee.



Together with all and singular buildings and ——— improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever therunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor —, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.

To have and to hold the said lot or piece of ground above described with the building and improvements thereon erected ——— hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors ——— and Assigns, to and for the only proper use and behoof of the said Grantee, its successors ——— and Assigns forever.

UNDER AND SUBJECT as aforesaid.

And the said — Grantors; for itself, its successors and assigns, — DO — by these presents covenant, grant and agree to and with the said Grantee, its successors ——— and Assigns, that — the said Grantor, its ——— Successors all and singular the hereditaments and premises herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors ——— and Assigns, against — it — the said Grantor, its

Successors, and against all and every other Person and Persons whatsoever lawfully claiming or to claim the same or any part thereof, by, from or under — his, her, them — or any of them, Shall and Will — forever —

WARRANT and forever DEFEND.

In Witness Whereof, the party of the first part hath herunto caused this instrument to be executed by its duly proper officers and its corporate seal affixed hereto, the day and year first above

IN THE PRESENCE OF US

*Handwritten signatures*  
Murray Blevins

SCHOOL DISTRICT OF THE BOROUGH OF CLIFTON HEIGHTS

By: *Richard Burns*  
President

Attest: *Charles Whittington*  
Secretary





RECEIVED on the day of the date of the above Indenture of the above named Grantor - full consideration.

WITNESSES SIGNING:

*James J. ...*  
*Charles J. ...*  
ON THIS 1<sup>st</sup> day of October 1965 before me, the

*Richard Burns*  
PROBATION  
*Charles J. ...*  
Secretary

Member - a Notary Public in and for county of Delaware, Pennsylvania, -

personally appeared - CHARLES S. SHILLINGFORD, Secretary of SCHOOL DISTRICT OF BOROUGH OF CLIFTON HEIGHTS,

and the the common or contract seal of the said Corporation duly affixed thereto; that the seal is affixed to the common or contract seal of the said Corporation; that the said Indenture was duly filed and drawn by N. RICHARD BURNS,

Secretary of the said Corporation; and for the said deed of the said Corporation for the use and benefit therein realized.

and that the name of said Corporation - is - Secretary - see of - N. RICHARD BURNS,

of the said Corporation, subscribed to the within Indenture in

and subscribed before me, the day and year

at Clifton Heights, Pennsylvania

*James J. ...*  
Notary Public  
My Commission Expires November 1, 1967  
Delaware County, Pennsylvania

*Charles J. ...*  
Secretary

(SEAL)

The witness of the within named Grantor is - 7 South Springfield Road, Clifton Heights, Pennsylvania, - On behalf of said Corporation

396124  
DEED 710

SCHOOL DISTRICT OF BOROUGH OF CLIFTON HEIGHTS  
19018  
Clifton Heights, Pennsylvania

ALBERT G. CRAYFORD, JR.  
One West Second Street  
Media, Pennsylvania 19063

CLERK OF THE COUNTY OF DELAWARE  
NOTARY PUBLIC  
DELAWARE COUNTY, PENNSYLVANIA

RECORDED in the Office for Recording of Deeds in and for

in Deed Book No. page etc

WITNESS my hand and seal of Office this

day of

Anno Domini 19

BOOK 2255 PAGE 1000

Penna. Realty Transfer Tax Affidavit filed

Nov 7 2 25 PM '69



This **Indenture** MADE the 30th day of December 1957 in the year of our Lord one thousand nine hundred and fifty-seven BETWEEN

THE BOROUGH OF CLIFTON HEIGHTS, A MUNICIPAL CORPORATION IN THE COUNTY OF DELAWARE, COMMONWEALTH OF PENNSYLVANIA of the first part, and UPPER DARBY SCHOOL DISTRICT, A SECOND CLASS SCHOOL DISTRICT, IN THE COUNTY OF DELAWARE, COMMONWEALTH OF PENNSYLVANIA

Witnesseth, That the said party of the first part, for and in consideration of the sum of \$10,000.00 the transfer of certain tracts or parcels of land situate in the Borough of Clifton Heights, County of Delaware, Commonwealth of Pennsylvania, by Upper Darby School District to the Borough of Clifton Heights as evidenced by a deed executed contemporaneously herewith.

and quit-claimed, and by these presents does grant, bargain, sell, remise, release and quit-claim, unto the said party of the second part, and to its heirs

and assigns forever, ALL THOSE CERTAIN tracts or parcels of land, SITUATE in the Borough of Clifton Heights, County of Delaware, State of Pennsylvania, as shown on a plan of property for Clifton Heights School District, prepared by Damon and Foster, Civil Engineers, Sharon Hill, Pennsylvania, dated January 18, 1952, being bounded and described as follows:

BEGINNING at a point of intersection of the center line of Springfield Road, (50 feet wide) with the Southwesterly side of Church Avenue, (an unopened 60 feet wide street) extended; thence, along the center line of said Springfield Road, North 82 degrees, 27 minutes, West, 385.37 feet to a point; thence, leaving same North 17 degrees, 15 minutes West 27.54 feet to a point in the Northwesterly side of said Springfield Road; thence along same, North 22 degrees, 27 minutes West, 385.68 feet to a point; the intersection of said Springfield Road, with the Northwesterly side of Oak Avenue, 60 feet wide; thence along said Oak Avenue, North 17 degrees, 15 minutes West 135.51 feet to a point; thence leaving same, North 72 degrees, 45 minutes East, 350 feet to a point; thence North 17 degrees, 15 minutes West 96.65 feet to a point; thence North 1 degree, 50 minutes, East 156.89 feet to a point; thence North 72 degrees, 45 minutes, East 179.97 feet to a pipe in the said side of unopened Church Avenue; thence along same, South 17 degrees, 15 minutes East, 648.15 feet to the first mentioned point and place of beginning.

EX-2635 WIL1016



CONTAINING an area of 6.6672 Acres.

BEING the same premises which School District of Borough of Clifton Heights by Deed dated 10/11/66 and recorded in Delaware County in Deed Book 2256 page 597 conveyed unto Borough of Clifton Heights.

BOOK 2635 PAGE 1017



Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof; AND ALSO all the estate, right, title, interest, - - - - -

property, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its heirs and assigns forever.

In witness whereof,

SEALED AND DELIVERED  
IN THE PRESENCE OF

*Henry A. ...*

*Quinn Kelly* (SEAL)  
President, Borough Council of Clifton Heights

*John ...* (SEAL)  
Secretary, Borough Council of Clifton  
Hd., B





REALTY TRANSFER TAX  
AFFIDAVIT OF VALUE

FOR RECORDER'S USE ONLY  
BOOK NUMBER 2635  
PAGE NUMBER 1016  
DATE RECORDED 1-10-80

COMPLETE APPLICABLE SECTIONS IN FULL AND FILE WITH RECORDER OF DEEDS WHEN THE FULL CONSIDERATION IS NOT SET FORTH IN THE DEED. IF THE TRANSFER IS WITHOUT CONSIDERATION OR A GIFT, OR IS A TAX EXEMPTION IS CLAIMED, CHAPTER 78, ACT OF DEC. 31, 1978, P. L. 1172 AS AMENDED.

SECTION I

(COMPLETE FOR ALL TRANSACTIONS)

BOROUGH OF CLIFTON HEIGHTS

UPPER DARRY SCHOOL DISTRICT

LOCATION OF LAND, TENEMENTS AND ENCUMBRANCES:

*Intersection of Pine Hill Road & Church Road*

FULL CONSIDERATION \$ NONE HIGHEST ASSESSED VALUE \$ \_\_\_\_\_  
FAIR MARKET VALUE \$ \_\_\_\_\_ QUALITY TRANSFER TAX PAID \$ NONE

TAX EXEMPT TRANSACTIONS: IF TRANSFER IS PARTIALLY OR WHOLLY EXEMPT, SHOW AMOUNT EX: PT, REASON (S) AND CITE PORTION OF LAW. By Pennsylvania Realty Transfer Tax Regulation 34. transfer between political subdivisions is exempt

IF THIS IS A TRANSFER FROM A TRUST, AGENT OR TRUST AGREEMENT, COMPLETE THE REVERSE SIDE

SECTION II

(COMPLETE ONLY IF PROPERTY WAS SUBJECT TO LIEN OR MORTGAGE AT THE TIME OF TRANSFER)

EXISTING MORTGAGE: \$ \_\_\_\_\_ DISPOSITION \_\_\_\_\_  
EXISTING MORTGAGE: \$ \_\_\_\_\_ DISPOSITION \_\_\_\_\_  
EXISTING LIEN OR OBLIGATION: \$ \_\_\_\_\_ DISPOSITION \_\_\_\_\_  
EXISTING LIEN OR OBLIGATION: \$ \_\_\_\_\_ DISPOSITION \_\_\_\_\_

SECTION III

(COMPLETE ONLY IF TRANSFER IS RESULT OF JUDICIAL SALE)

OFFICIAL CONDUCTING SALE: NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_ TITLE \_\_\_\_\_  
SUCCESSFUL BIDDER: NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_ TITLE \_\_\_\_\_

	JUDGMENT PLUS FIDELIENS	BID PRICE	HIGHEST ASSESSED VALUE
HIGHEST ASSESSED VALUE			
JUDGMENT PLUS INTEREST			
BID PRICE			
PRICE DEFERRED LUM.			
PRICE RECORDED MORTGAGE			
PRICE RECORDED MORTGAGE			
UNPAID REAL ESTATE TAXES			
WATER RENT OR			
SEWAGE RENT DUE			
ATTORNEY FEES			
OTHER COSTS, ETC.			
TOTAL			

NOTE: CALCULATIONS MUST BE SHOWN IN ALL COLUMNS.

SIGN AND SUBSCRIBE BEFORE ME THIS  
DAY OF \_\_\_\_\_ 1980  
BY COMMISSIONER \_\_\_\_\_

ALL OF THE INFORMATION ENTERED ON BOTH SIDES OF THIS AFFIDAVIT IS TRUE, FULL AND COMPLETE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

GRANTEE  AGENT FOR GRANTEE  
 GRANTOR  AGENT FOR GRANTOR  
 TRUSTEE



10394

# Deed

**TOWNSHIP OF CLIFTON HEIGHTS,  
A MUNICIPAL CORPORATION IN  
THE COUNTY OF DELAWARE,  
COMMONWEALTH OF PENNSYLVANIA**

**UPPER DARRY SCHOOL DISTRICT,  
A SECOND CLASS SCHOOL DISTRICT  
IN THE COUNTY OF DELAWARE,  
COMMONWEALTH OF PENNSYLVANIA**

\_\_\_\_\_

\_\_\_\_\_

PH111

JUN 6 4 11 PM '78



STATE OF PENNSYLVANIA  
COUNTY OF DELAWARE

On this, the 30th day of December, 1977, before me, the undersigned officer, personally appeared **JUSTIN W. KELLY** and **DONNA CARR**, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and they acknowledged that they executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Charles H. Hall*  
Notary Public  
Delaware County, Pennsylvania

Form, Realty Transfer Tax Affidavit 7-67

4 1978

RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS  
IN THE COUNTY OF DELAWARE  
BOOK 2533 PAGE 1016  
WITNESS MY HAND AND SEAL OF OFFICE THIS  
THIRTIETH DAY OF DECEMBER, A.D. 1978

*Francis X. Robinson*  
Register of Deeds  
Deputy Recorder

202335 PA1020