

MUNICIPALITY OF MONROEVILLE

ORDINANCE NO. 2261

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE, ALLEGHENY COUNTY, PENNSYLVANIA, A HOME RULE CHARTER COMMUNITY, HEREBY AUTHORIZING THE APPROVAL OF THE PURCHASE OF PROPERTY KNOWN AS THE "KRUSEY PROPERTY"

WHEREAS, the MUNICIPALITY OF MONROEVILLE, is desirous of acquiring certain lands and properties within the territorial limits of the MUNICIPALITY OF MONROEVILLE to purchase for community park and area for the benefit of its residents; and

WHEREAS, the MUNICIPALITY OF MONROEVILLE has sought certified appraisals of lands in the MUNICIPALITY OF MONROEVILLE; and

WHEREAS, the MUNICIPALITY OF MONROEVILLE has held a public hearing concerning the acquisition of said lands.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, this 8th day of April, 2003, as follows:

SECTION 1. The proper Municipal officials are hereby authorized, empowered and directed to enter into an Agreement of Sale for the sum of 4.0 acres + or - with the Sellers, G. PAUL KRUSEY and ROSEMARIE J. KRUSEY, his wife, for FOURTEEN THOUSAND DOLLARS AND 00/100 (\$14,000.00) per acre.

SECTION 2. A copy of said Agreement of Sale is attached hereto marked Exhibit No. "A" and made part of this Ordinance.

SECTION 3. All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed. The following Ordinance or parts thereof are specifically repealed; and

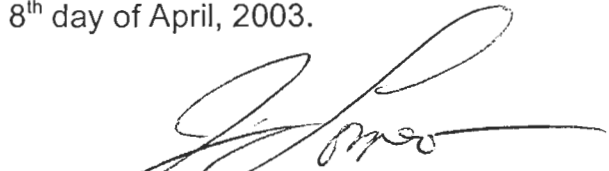
SECTION 4. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Municipality that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

ORDAINED and ENACTED this 8th day of April, 2003.

ATTEST:



Marshall Bond, Municipal Manager



James J. Lomeo
Mayor

ENTERED INTO LEGAL BOOK: _____ April 18, 2003 _____

AGREEMENT OF SALE

1. PARTIES: By and Between: G. PAUL KRUSEY and ROSEMARIE J. KRUSEY, his wife, 231 Wallace Drive, Monroeville, PA 15146, hereinafter referred to as "Sellers"

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MUNICIPALITY OF MONROEVILLE, a Municipal corporation, whose offices are located at 2700 Monroeville Blvd., Monroeville, Allegheny County, Pennsylvania 15146, (hereinafter referred to as the "Buyer").

WHEREAS, the MUNICIPALITY OF MONROEVILLE is desirous of purchasing approximately 4.0 acres (+ or -) from the Sellers herein; and

WHEREAS, the Sellers herein are desirous of selling to the Buyers said acreage more fully described herein; and

2. COVENANT TO SELL: WITNESSETH THAT: Sellers and Buyer, intending to be legally bound hereby, covenant and agree as follows: Sellers shall, on the date hereinafter specified, by deed of general warranty, well and sufficient, grant and convey unto Buyer, in fee simple, clear of all liens and encumbrances, except as hereinafter set forth, good and marketable title (as such as will be insurable by any responsible title insurance company at regular rates) to the following (hereinafter referred to as "the Property").
3. DESCRIPTION: 4.0 acres + or -, all more or less of land as more fully set forth in the attached drawing which is made part of this Agreement of Sale.
4. CONSIDERATION: The Buyer shall pay the sum of FOURTEEN THOUSAND DOLLARS AND 00/100 (\$14,000.00) per acre as represented in a survey performed and paid for at the Buyer's sole cost and expense.

Earnest money deposit upon signing: The Buyers shall pay over the sum of \$10,000.00 into an escrow account at a Bank agreeable to the Seller to hold for the benefit of the Sellers and paid over at closing in accordance with the terms and conditions contained herein.

The Balance of the proceeds shall be due at the delivery of a Deed from the Sellers to the Buyers*. (*See Paragraph 18).

5. SETTLEMENT: Unless otherwise agreed, settlement shall be held on the 8 day of September, 2003. By written notice to Sellers, Buyer may designate a definite time within five (5) days of said date and a definite place at the Municipality of Monroeville, 2700 Monroeville Blvd., Monroeville, Allegheny County, Pennsylvania 15146, for settlement after the date fixed hereinabove.
6. PRORATION ITEMS: Real estate taxes shall be prorated for the fiscal year of settlement based upon real estate taxes levied or estimated to be levied in that year by Allegheny County and Gateway School District, as more fully set forth in Paragraph 18 of this Agreement.
7. POSSESSION: Possession of the Property shall be delivered to Buyer on the date of closing. The Sellers agree and shall permit the Buyer or its designee to come onto the property to perform certain testing and surveying of the land which is the subject of this sale.

In the event that possession of the Property is delivered to Buyer prior to delivery of deed or in the event that Sellers remain in possession thereof after delivery of deed to Buyer and, in either case, the party in possession defaults in its performance hereunder, then, and in any such event, the defaulting party in possession does hereby authorize and empower any attorney of the Court of Common Pleas of the county in which the Property is located to appear for said party and confess judgment in an amicable action in ejectment against said party and all persons claiming under said party; and such defaulting party does hereby further agree that a Writ of Possession may forthwith issue and be duly executed on said judgment and execution, the party in possession may be ousted from such possession and the same delivered to the other party, hereby releasing all errors and waiving all appeals, exemptions and stays of execution or other process on such judgment and for the confession and entry of such judgment on this Agreement or a copy hereof duly certified by affidavit shall be sufficient warrant therefore.

8. RISK OF LOSS, MAINTENANCE OF THE PROPERTY AND BUYER'S OPTION: Risk of loss of the Property shall remain upon the Seller until delivery of possession to Buyer. Sellers shall maintain and repair the Property in as good condition as it is now, except for ordinary wear and tear, until delivery of the same to Buyer. If there shall be a material change in the physical condition of the Property, between the date hereof and the time of Buyer's taking possession, which is not the fault of the Buyer, Buyer shall have the option to: (a) void this Agreement, whereupon all monies paid on account hereof shall forthwith be returned to Buyer; and upon such return, all parties shall be relieved of liability hereunder; or (b) elect to proceed with this Agreement and pay the full consideration, in which event Sellers shall assign to Buyer any insurance proceeds to which Sellers may be entitled as a result of the change in condition. To exercise this option, Buyer shall give written notice to Sellers prior to the delivery of the deed or of possession, whichever occurs first. If Buyer fails to give such written notice, Buyer shall be conclusively deemed to have chosen option (b).

9. EMINENT DOMAIN: The Sellers acknowledge that the Buyer shall, notwithstanding this Agreement, file an action of Condemnation in order to secure the interest of all those individuals or parties who have or may have an interest in the subject property, but have not agreed to the terms and conditions of this Agreement of Sale.

The Sellers who execute this Agreement of Sale and subsequent Deed shall convey and sell over to the Buyer the subject property in accordance with the terms and conditions of this Agreement of Sale and in lieu of an condemnation filed by the Buyer herein.

10. SELLERS EXPENSE: Sellers shall be responsible for cost of deed preparation and all matters of title clearance and a reasonable charge for making disbursements on behalf of Sellers.

11. DEFAULT: In the event of default:

A. BY BUYER: Sellers may, at Sellers option, elect to: (1) retain the earnest money and all monies paid on account of the purchase price as liquidated damages, in which event this Agreement shall become null and void and both parties shall thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Sellers damage will be difficult of ascertainment and that the earnest money and all monies paid

on account of the purchase price constitute a reasonable liquidation thereof and not a penalty; or (2) apply said monies toward Sellers damage, including, but not limited to, loss of bargain, consequential damages and attorney's fees, provided, however, that no such election of A(2) hereof shall be final or exclusive until full satisfaction shall have been received.

- B. BY SELLERS: Buyer may, at Buyer's option, elect to: (1) waive any claim for loss of bargain, in which event Sellers hereby agree to repay to Buyer the earnest money and all monies paid on account and, in addition, reimburse Buyer for all direct, out-of-pocket costs and expenses including, but not limited to, title examination, survey and attorney's fees.

In lieu thereof, however, Buyer may elect either or both of the following remedies: (2) an action for specific performance; (3) an action at law for damages including, but not limited to the items in subparagraph B(1) hereof, consequential damages, loss of bargain and attorney's fees, provided, however, that no such election of B(2) or (3) hereof shall be final or exclusive until full satisfaction shall have been received.

12. MODIFIED TIME OF ESSENCE: If full performance of this Agreement is not completed by the date set forth in Paragraph 7, either party shall have the right after that date to declare time to be of the essence of this Agreement by giving written notice to the other party. Such notice shall contain a declaration that time is of the essence and shall fix the time, date and place of final settlement, which date may not be sooner than fifteen (15) days nor later than thirty (30) days following the effective date of giving such notice.
13. INSURANCE: Sellers understand that, to protect Sellers own interest, Sellers should retain or place in force adequate fire and casualty insurance with extended coverage on the Property as of the effective date of this Agreement. Buyer understands that (i) risk of loss passes to Buyer at the time set forth in Paragraph 7; (ii) Buyer may have an insurable interest in the Property upon the signing of this Agreement and (iii) Buyer understands that, to protect Buyer's own interest, Buyer should retain or place in force adequate fire and casualty insurance with extended coverage on the Property as of the effective date of this Agreement.
14. UNDER AND SUBJECT: Buyer shall take title to the Property

SUBJECT to the following: (a) building and use restrictions of record; (b) vehicular or pedestrian easements of record affecting the Property and being contiguous to the front, rear or side lot lines; (c) water, sewer, gas, electric, cable television and telephone lines or easements therefore of record or as presently installed, provided, however, that said lines or easements shall not adversely affect the use of the Property for residential purposes or at any time require the removal or alteration of the presently existing dwelling(s) or appurtenant structure(s) thereon; (d) prior grants, reservations or leases of coal, oil, gas, or other minerals as shown by instruments of record; and (e) easements apparent upon inspection of the Property.

15. PRE-CLOSING INSPECTION. Prior to closing, Buyer shall be permitted, on reasonable notice and at a reasonable time, to enter the Property and to inspect the same as more fully set forth in Paragraph 7.

16. ZONING AND OTHER ORDINANCES: Sellers warrant that the Property has the following Zoning Classification: Residential, that the present use is in compliance therewith, and that there exists no notice of any uncovered violations of housing, building, safety or fire ordinances. (For closing, obtain statements as to compliance and non-violation, if required).

17. SEWAGE FACILITY: The Pennsylvania Sewage Facilities Act of January 24, 1966, No. 537 P.L. 1535, as amended, requires that there be a statement regarding the availability of a community sewage system:

X The Property is serviced by a community sewage system.

___ Buyer is hereby advised that there is no currently existing community sewage system available to the Property. There is a permit for the operation of an individual sewage system for the Property, and said permit has been exhibited by Sellers to Buyer.

___ Buyer is hereby advised that there is no currently existing community sewage system available to the Property and that a permit for an individual sewage system will have to be obtained from the appropriate local agency pursuant to the Pennsylvania Sewage Facilities Act. * (*See Paragraph 18)

Buyer should contact the appropriate local agency which administers

the Pennsylvania Facilities Act, which is the N/A , before signing this Agreement to determine the procedures and requirements for obtaining a permit for an individual sewage system.

18. ADDITIONAL PROVISIONS:

This Agreement is expressly conditional upon the following conditions:

- A. That a title search set forth in Paragraph 2 reveals that the Buyer can receive title in fee simple absolute clear of all liens and encumbrances and that the title is good and marketable, such as will be insured by a responsible Title Insurance Company.
- B. That a survey will be completed at the Buyer's expense as more fully set forth in Paragraph 4 which survey is acceptable to the Buyer.
- C. The Buyer may within 60 days of the signing of this Agreement elect to perform a Phase I Environmental Assessment and/or perform any core boring or drilling to ascertain whether the integrity of the soil conditions are acceptable to the Buyer. Said tests must be performed within the time period between the signing of this Agreement and Settlement. Copies of said test results shall be given to the Sellers herein if it is determined that the results are unacceptable to the Buyer herein.
- D. The approval of a final sub-division approved by the MUNICIPALITY OF MONROEVILLE showing the subject property.
- E. Buyer is able close and settle with the owners of land adjacent to the subject premises known as the Bohinskis'.
- F. The Buyer herein agrees to post the said property and acreage with "no hunting" signs upon delivery of possession.
- G. Buyer herein agrees to perform a complete survey of the 4.0 + or - acres located at 235 Wallace Drive, Monroeville, PA 15146.
- H. The Buyer shall waive the Municipal share of real estate transfer tax (1%) and share equally in the cost of the remaining transfer tax of 1.5% between the Buyer and Sellers.
- I. This Agreement may be executed in counterparts.

- J. The Buyer shall be prohibited from the use of Wallace Drive since the four (4) acre parcel is not contiguous or provides direct access to Wallace Drive, no vehicular access is permitted.
- K. Since the owner contemplates submitting a six lot residential subdivision on his remaining 10.2 acres of land, the Municipality will provide aerial mapping photographs used by the Municipality of Monroeville for the Bohinski, Madjerich and Krusey parcels assembled for the Monroeville Community park project at no cost to Paul and Rosemarie Krusey.
- L. Any illumination of park improvements above one foot candle along the remaining Krusey property shall be discussed and approved by Paul and Rosemarie Krusey prior to installation.

In the event that any of these express conditions are not met or the parties are unable to agree in writing to a suitable alternative, then upon ten (10) days written notice to terminate this Agreement of Sale by either party, this Agreement of Sale shall be null and void and all earnest money shall be returned to the Buyer and the parties mutually release each other from any and all claims or causes of action under this Agreement of Sale.

- M. The Buyer shall be prohibited from erecting any maintenance buildings, port-a-johns or any permanent bathroom facility on said 4 acre parcel.
19. WAIVER OF TENDER; NOTICES: Formal tender of deed and of purchase price are hereby waived. Except as otherwise provided herein, any notices between the parties hereto shall be in writing and may be served in the manner provided by law for the service of process in equity or may be mailed by certified or registered mail to either party at the respective addresses above set forth. If mailed, such notice shall be deemed effectively given as of the second business day after the date of posting.
20. ENTIRE CONTRACT: This Agreement constitutes the entire contract between the parties hereto, and there are no other understandings, oral or written, relating to the subject matter hereof. This Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

Wherever used in this Agreement, the singular shall be the plural, the plural the singular, and the use of any gender shall be applicable to all

genders. Paragraph headings are inserted for convenience only and shall not form part of the text of this Agreement.


21. COVENANT NOT TO RECORD: Buyer will not record this Agreement, and any such recording shall constitute default by Buyer hereunder.
22. BINDING EFFECT: This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors and assigns.
23. COAL NOTICE: NOTICE-THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS TO ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (The notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. 984, as amended, and is not intended as notice of unrecorded Instruments, if any.)

Unless the foregoing notice is stricken, the deed shall contain the notice, as above set forth, and shall also contain, and Buyer shall sign, the notice specified in the Bituminous Mine Subsidence and Land Conservation Act of 1966.


THIS IS A LEGALLY BINDING CONTRACT; IF NOT FULLY UNDERSTOOD, CONSULT YOUR ATTORNEY PRIOR TO SIGNING.

OFFER OF SALE


WITNESS the due execution by the Sellers herein this 7 day of April, 2003.



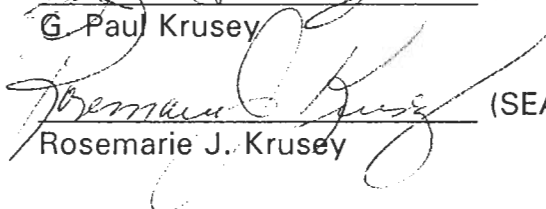
Witness



Witness



G. Paul Krusey (SEAL)



Rosemarie J. Krusey (SEAL)

