

MUNICIPALITY OF MONROEVILLE

ORDINANCE NO. 2262

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 "HENDERSON PROPERTY" IN ORDER TO INSTALL RESTROOMS IN ALPINE PARK

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 an installation of the public restroom in Alpine Park for the benefit of the residents of the MUNICIPALITY OF MONROEVILLE; and

WHEREAS, the MUNICIPALITY OF MONROEVILLE has entered into negotiations with the owners of said land, JAMES HENDERSON and JACQUELYN J. Z. HENDERSON, husband and wife.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, this 13th day of May, 2003, as follows:

SECTION 1. The proper Municipal officials are hereby authorized, empowered and directed to enter into an Agreement of Sale and purchase for a part of a parcel of property owned by JAMES HENDERSON and JACQUELYN J. Z. HENDERSON, husband and wife. A copy of said Agreement of Sale is attached hereto marked Exhibit No. "A" and made part of this Ordinance.

SECTION 2. All Ordinances or parts of Ordinances which are inconsistent herewith

are hereby repealed. The following Ordinance or parts thereof are specifically repealed; and

SECTION 3. 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 13th day of May, 2003.

ATTEST:



Marshall Bond, Municipal Manager



James J. Lomeo
Mayor

ENTERED INTO LEGAL BOOK: May 23, 2003

AGREEMENT OF SALE

1. PARTIES: By and Between: JAMES HENDERSON and JACQUELYN J. Z. HENDERSON, husband and wife, Monroeville, Allegheny County, Pennsylvania 15146, hereinafter referred to as "Sellers"

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THE MUNICIPALITY OF MONROEVILLE, hereinafter referred to as "Buyer".

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 special 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"). Notwithstanding this Agreement, Seller shall not be responsible to clear any title defects. Said responsibility shall be with the Buyer.

3. DESCRIPTION:

See Deed of February 7th, 1995, recorded in the Recorder's office of Allegheny County at D.B.V. 9400, page 001, Lot and Block No. 1108-M-336. (See attached drawing outlined in yellow).

4. TITLE REFERENCE: Plan Book Volume _____, Page _____,
_____ County.

5. ITEMS INCLUDED IN SALE: The conveyance will be made together with all and singular the buildings, improvements, easements and appurtenances whatsoever thereunto appertaining; it being agreed that this sale and purchase involves vacant land.

6. CONSIDERATION:
Buyer will purchase the Property
and pay therefore the sum of \$1.00 and other valuable consideration as
stated below.

7. SETTLEMENT: Unless otherwise agreed, settlement shall be held within sixty (60) days of an approved sub-division by the MUNICIPALITY OF MONROEVILLE, or by written notice to Sellers, the Buyer may designate a definite time within five (5) days of said date and a definite place in Allegheny County, Pennsylvania, for settlement after the date fixed hereinabove.

8. PRORATION ITEMS: Water and sewer charges, municipal garbage and rubbish removal charges, rents, interest and real estate taxes shall be prorated as of the date of closing. Real estate taxes shall be prorated for the calendar year of settlement based upon real estate taxes levied or estimated to be levied in that year by each taxing body. School taxes shall be prorated for this fiscal year. Buyer shall be responsible for all transfer taxes.

9. POSSESSION: Possession of the Property shall be delivered to Buyer on the date of closing.

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.

10. RISK OF LOSS, MAINTENANCE OF THE PROPERTY AND BUYER'S OPTION: Risk of loss of the Property shall remain upon the Sellers 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).

11. EMINENT DOMAIN: If the Property or any part thereof is taken by eminent domain prior to settlement, Buyer shall have the option to: (a) void this Agreement, whereupon all monies paid on account thereof shall forthwith be paid to Buyer; and upon such payment, 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 all damages, to which Sellers may be entitled and which may be assigned by Sellers pursuant to the Pennsylvania Eminent Domain Code. Within five (5) days after notification of any such taking, but in no event later than the settlement, Sellers shall notify Buyer thereof.

12. SELLERS' EXPENSE: Sellers shall have no expense. Buyer shall be responsible for all expenses, including deed preparation.

13. MUNICIPAL IMPROVEMENTS: Sellers shall pay for all work and improvements for which a municipal claim may be filed against the property, where an Ordinance or Resolution authorizing such work or improvements is adopted prior to the date of this Agreement.

14. 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' damages 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' damages, 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 agrees 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.

15. 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.

16. **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 9; (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.

17. **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.

18. **INSPECTION OF PROPERTY:** It is hereby understood between the parties hereto that the Property has been inspected by Buyer or his agent, that the same is being purchased solely in reliance upon such inspection and that there have not been and are no representations or warranties, expressed or implied, with respect to the physical condition of the Property made by Sellers or Broker except those provided in this Agreement or those set forth in this paragraph: as is.

19. **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 and its plumbing, heating and electrical system and the items included in the sale in Paragraph 5.

20. **ZONING AND OTHER ORDINANCES:** Seller warrants 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).

21. 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:

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 22)

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.

22. ADDITIONAL PROVISIONS:

- A. The Municipality of Monroeville shall receive the subject property so designated on the drawing, which is attached hereto and made part of this Agreement of Sale, at no cost to the Municipality of Monroeville.
- B. In turn, the Municipality of Monroeville shall restore any disturbed property to its original or better condition.
- C. The Municipality of Monroeville shall clear and grub trees and overgrowth, in or on Sellers' property, as specified and agreed to between the parties.
- D. The Municipality of Monroeville shall provide a privacy fence between the Municipal property and the property presently owned by the Sellers herein, as agreed to between the parties, at not cost or expense to the Seller.
- E. The Municipality of Monroeville shall take all steps necessary to go through the process of subdivision and provide a new Deed to the Sellers to reflect the property, after sale, owned by Sellers at no cost to the Sellers.

- F. The Municipality of Monroeville shall construct and tie in a sanitary sewer line from the Sellers' house, through the Sellers' property to a public manhole at no cost to Sellers. Buyer agrees to restore property to its now existing condition.
- G. The Municipality of Monroeville shall construct and tie in a public water line.

23. 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.

24. 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.

25. COVENANT NOT TO RECORD: Buyer will not record this Agreement, and any such recording shall constitute default by Buyer hereunder.

26. 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.

27. 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.

WITNESS the due execution hereof this 13 day of May, 2003.

ATTEST:

Marshall W. Bond

MUNICIPALITY OF MONROEVILLE

James J. Lomeo
By: James J. Lomeo
(Please Print)

ACCEPTANCE

NOW, this _____ day of _____, 200____, the foregoing
Agreement is hereby accepted by Sellers.

WITNESS

James J. Henderson

(SEAL)

James J. Henderson

Jacquelyn J. Z. Henderson

(SEAL)