

BOROUGH OF MALVERN

**SALE OF
TAX PARCEL 2-4-11.1
AT THE INTERSECTION OF
BRIDGE STREET and OLD LINCOLN HIGHWAY**

Bid Package

**Deadline for Receipt of Bids:
4:00 PM, MARCH 3, 2016**

**Date of Sealed Bid Opening:
4:30 PM, MARCH 3, 2016**

**BOROUGH OF MALVERN
PROPOSED SALE OF
TAX PARCEL NO. 2-4-11.1
AT THE INTERSECTION OF
BRIDGE STREET AND OLD LINCOLN HIGHWAY
+/-0.38 ACRES**

The Borough Council of the Borough of Malvern, Chester County, Pennsylvania, has determined that it is in the best interest of the Borough to consider the sale of the real property described above (the "Property"). The Board is soliciting sealed bids from interested parties, pursuant to 8 Pa. C.S.A. § 1201.1 and in accordance with this Bid Package (the "Bid Package"), for the purchase of the Property.

This Bid Package includes (i) this document and (ii) the form of Agreement of Sale included with this package.

The interest in the Property being offered for sale is a fee simple ownership interest, under and subject to matters of record and matters that an accurate and complete survey would disclose, as provided in the Agreement of Sale and the Bid Package Documents.

This document includes instructions for the submission of sealed bids for the purchase of the Property, the form of Agreement of Sale to be submitted, and information about how to gain access to the Property in order to conduct inspections (collectively, the "Bid Package Documents").

Questions concerning the Property, or this Bid Package, should be directed in writing to the Borough Manager as follows:

**Christopher Bashore
Borough Manager
1 East First Avenue
Malvern, PA 19355
610-644-2602**

Your question will be forwarded to the appropriate person for a response. The Borough will endeavor to respond to all questions, and to send responses to all persons who have requested Bid Package Documents, but assumes no liability for failure to do so.

SEALED BID SUBMISSION INSTRUCTIONS

1. Form and Style of Bids

a. Any prospective purchaser who wants to submit a bid for the purchase of the Property shall do so by completing, signing and submitting the form of Agreement of Sale ("Agreement of Sale") included as part of this Bid Package, *in duplicate*, accompanied by the required deposit security.

b. All blank spaces in the Agreement of Sale must be completed. Information should be completed by typing the required information (preferred) or by legible handwriting in ink.

c. Where indicated in the Agreement of Sale, dollar amounts must be expressed in both words and numerals, and in case of discrepancy between the two, the amount written in words will be controlling. The price offered for the Property must be payable in, and all dollar amounts are presumed to be expressed as, lawful money of the United States of America.

d. The prospective purchaser shall not alter or modify the form of Agreement of Sale (except by completing blanks).

e. The Agreement of Sale shall be signed and submitted **IN DUPLICATE**, both bearing original signatures of the prospective purchaser. Each copy of the Agreement of Sale shall include the legal name of the prospective purchaser, shall state whether the prospective purchaser is an individual, sole proprietor, partnership, corporation or other legal entity, and if so, the type of legal entity and the state of its organization. The Agreement of Sale shall be signed by the person or persons legally authorized to bind the purchaser to a contract.

f. In the case of a corporation, partnership, limited liability company or other form of legal entity, a true and correct copy of the resolutions authorizing the person signing the Agreement of Sale to sign on behalf of the entity shall be included.

2. General Terms.

a. **PROPERTY CONDITION. THE PROPERTY IS BEING SOLD "AS IS, WHERE IS" IN ITS PRESENT CONDITION AND WITH ALL FAULTS, AND THE BOROUGH HAS NOT AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO THE PROPERTY, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN THE BOROUGH'S WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED AT SETTLEMENT), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF**

ACCESS, INGRESS OR EGRESS, VALUATIONS, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATED TO OR AFFECTING THE ECONOMIC, FUNCTIONAL, ENVIRONMENTAL OR PHYSICAL CONDITION OF THE PROPERTY. EACH PROSPECTIVE PURCHASER IS BEING GIVEN THE OPPORTUNITY TO CONDUCT ITS OWN DUE DILIGENCE OF THE PROPERTY AND WILL BE RELYING SOLELY ON ITS DUE DILIGENCE IN COMPLETING THE PURCHASE OF THE PROPERTY. UPON CLOSING, THE PROSPECTIVE PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY EXIST AT THE PROPERTY. PROSPECTIVE PURCHASER IN THE AGREEMENT OF SALE IS DISCLAIMING THE EXISTENCE OF OR RELIANCE UPON ANY WARRANTY OR IMPLIED WARRANTY INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE AND WILL BE EXPRESSLY AGREEING THAT THE BOROUGH IS NOT LIABLE OR BOUND IN ANY MATTER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY AGENT, EMPLOYEE, BROKER, OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO IN THE AGREEMENT OF SALE.

b. DUE DILIGENCE. ANYONE CONSIDERING SUBMITTING A BID TO PURCHASE THE PROPERTY IS URGED TO CONDUCT A THOROUGH INSPECTION OF THE PROPERTY AND TO SEEK THE ADVICE OF QUALIFIED EXPERTS.

c. Brokers; Commissions. The Borough shall not pay any commission, fee or other compensation of any kind to any real estate broker, agent or other person for real estate brokerage or other services rendered in connection with the sale of the Property. Any prospective purchaser who uses or accepts the services of any real estate broker, agent or other person is responsible to pay all commissions, fees and other compensation that may be due such person(s), and will be obligated to indemnify, defend and hold the Borough harmless from any claims brought against the Borough by any person claiming to be entitled to any commission, fee or other compensation as a result of services performed in connection with such prospective purchaser's submission of a Bid or purchase of the Property. This obligation shall survive settlement on the purchase of the Property.

d. Conditions and Contingencies. The bids may not be subject to any conditions or contingencies, including financing contingencies, except those expressly contained in the Agreement of Sale. Prospective purchasers are advised to make the necessary financing arrangements before submitting their bids. The Borough is not

providing or offering to provide financing, or assistance in obtaining financing, for prospective purchasers.

3. **Security**

a. Each bid shall be accompanied by security in the form of a certified check or bank cashier's check payable to the order of the Borough of Malvern in the amount of ten percent (10%) of the purchase price offered for the Property, pledging that the prospective purchaser will purchase the Property at settlement for the amount proposed, on the terms specified in the Bid Package and the Agreement of Sale, if its bid is accepted by the Borough. **DO NOT SUBMIT CASH SECURITY. THE BOROUGH ASSUMES NO RESPONSIBILITY FOR CASH SUBMITTED WITH ANY BID.**

b. The Borough shall have the right to hold the security submitted with all bids while bids are being considered. If the Borough rejects a bid, the security shall be returned to the person submitting such bid. Security posted by persons whose bids are rejected will be returned without interest. If a bid is accepted, the Borough shall retain the security furnished by the successful person subject to the terms of the Agreement of Sale as the "Deposit" thereunder. Pending the Closing or earlier termination of the Agreement of Sale, the security may be deposited into the Borough's general fund and may be co-mingled with the Borough's general fund. The security will not earn interest. The security posted by the successful bidder shall be applied against the purchase price at settlement, or if settlement does not occur shall be retained by the Borough or returned to the purchaser, as the case may be, pursuant to the terms of the Agreement of Sale.

4. **Submission of Bids; Timeliness; Acceptance or Rejection; Rights Reserved to Borough.**

a. All copies of the signed Agreement of Sale and the security shall be enclosed in a sealed, opaque envelope. If the bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notations "Bid Enclosed" on the face thereof. Bids transmitted orally, electronically, telephonically, by facsimile transmission, telegraph or by any means other than actual physical delivery of original, signed documents accompanied by the required security are invalid and will not receive consideration.

b. The bids must be delivered to Christopher Bashore, Borough Manager, 1 East First Avenue, Malvern, PA 19355, in accordance with the Bid Package Documents no later than 4:00 P.M. (Prevailing Local Time) on or before March 3, 2016. Bids received after the time and date for receipt of Bids will be returned unopened to the person submitting such Bid. The prospective purchaser is responsible for timely, physical delivery of his or her bid. Timeliness is based on the date and time of delivery,

not the date or time of mailing or other means of dispatch. The Borough's determination of the timeliness and completeness of any bid is final.

c. Bids shall be accompanied by the following supplementary documents:

(i) A financial statement of the proposed purchaser or other documentation such as a bank letter of reference, demonstrating the financial ability of the prospective purchaser to complete the purchase, if his or her bid is accepted.

d. A bid may not be modified, withdrawn or canceled by anyone during the stipulated time period following the time and date designated for receipt of bids within which the Borough may accept or reject Bids as set forth in this Bid Package.

e. The Borough reserves the absolute right to reject any or all bids. The Borough reserves the right to reject a bid which is in any way incomplete or irregular, or to waive such defects or irregularities. The Borough's determination with respect to the conformity of any bid submitted pursuant to this Bid Package, and the Borough's decision to waive any technical deficiency or non-conformity, shall be final.

f. The bids received will be presented to the Borough for consideration. The Borough may accept or reject any bid for any or no reason. The Borough expressly reserves the right to consider and accept or reject bids based on considerations other than price, taking into account such other factors as the Borough deem to be in the best interests of the Borough. The Borough in all respects reserve the right to determine which (if any) of the bids submitted is in the Borough's own best interest.

g. The Borough reserves the right to request supplemental information be submitted by one or more, or all, persons submitting bids.

h. Bids will be accepted or rejected by the Borough on or before March 15, 2016. Any bid not expressly accepted by the Borough on or before such date shall be deemed to have been rejected, and shall be null and void. The Borough's acceptance of one bid shall automatically be deemed a rejection of all other bids. Acceptance or rejection of bids shall take place at a public meeting of the Borough at March 15, 2016. The Borough shall endeavor to provide notice of the date and time at which bids will be accepted or rejected to all persons submitting bids. The Borough may open and consider bids submitted pursuant to this Bid Package at any time, and need not open or consider bids simultaneously or at the same meeting.

i. Once a bid is accepted by the Borough, the successful bidder will be notified in writing. The bid, as accepted, shall constitute a binding contract, and the Borough shall cause the Agreement of Sale to be executed in the manner required by law, and a fully signed duplicate original to be delivered to the successful bidder.

5. Settlement

a. Once a bid has been accepted, the purchaser must complete settlement on the Property and make payment of the full purchase price in cash or by certified or

bank cashier's check, or by wire transfer of immediately available funds, within sixty (60) days after the Borough's acceptance, or another date agreed to by the parties.

b. If a Bid is accepted and the successful bidder completes settlement, the Property will be conveyed in fee simple by special warranty deed, free and clear of mortgages, judgments and other monetary liens (other than the lien of real estate taxes and/or water rents and sewer charges not yet due and payable), but subject to existing easements, restrictions and other matters of record, as well as all encroachments, boundary discrepancies, unrecorded easements and other matters, recorded and unrecorded, that a complete and accurate title search and survey of the Property would disclose.

6. Prospective Purchasers' Representations

a. By submitting a bid, a prospective purchaser represents to the Borough that:

(i) He or she has read and understands this Bid Package, and his or her bid is submitted according and subject to this Bid Package.

(ii) He or she has visited and visually inspected the Property. His or her bid has been submitted based on his or her personal observations, and the advice of his or her own professional advisors, and other information obtained by means of his or her own diligence; and

(iii) The Borough or its representatives have not made any statement, representation, warranty or assurance, and he or she is not relying on any representation, warranty, statement or assurance by the Borough or any representative thereof other than those, if any, expressly contained in the Agreement of Sale or the Bid Package Documents.

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DESCRIPTION AND CONDITION OF THE PROPERTY

The Property consists of fee simple title to a parcel of land of approximately 0.38 acres, more or less, located at the Northeasterly corner of the intersection of Bridge Street and Old Lincoln Highway, Borough of Malvern, Chester County, with all building(s) and improvement(s) situated thereon. The Property is designated as Chester County UPI No. 2-4-11.1.

The Borough is not making any warranty or representation regarding the environmental or physical condition of the Property, any building(s) and improvement(s) or its contents, its suitability for any particular use, or any other matter. The Property is offered for sale "AS IS," with all faults, and without any obligation on the part of the Borough to cure or correct any defective condition on or about the Property.

Prospective purchasers are responsible for satisfying themselves regarding the condition of the Property and its feasibility for their intended use before submitting their Bid. No one acting on behalf of the Borough, including, but not limited to, its officers, employees and agents, is authorized to make any statements or representations about the Property other than those contained in the REQUEST FOR BID, and no person shall have the right to rely on any such representations or statements.

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INSPECTION OF THE PROPERTY

Prospective purchasers may inspect the property by appointment.

Appointments may be scheduled by calling Christopher Bashore, Borough Manager, at 610-644-2602 during regular business hours, Monday through Friday.

Prospective purchasers may be accompanied by their architects, engineers, consultants and other experts. Inspections will be limited to inspections of the land that can be inspected without damaging the land.

Any person conducting such inspections must indemnify and hold the Borough harmless from any bodily injury or property damage arising directly or indirectly as a result of such inspections, whether suffered or caused by the prospective purchaser, or his or her agents, employees, consultants, inspectors or contractors.

Prospective purchasers may be required to sign the Borough's form of release and/or indemnity agreement before conducting an inspection.

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (the "Agreement") is made as of the 15th day of March, 2016 (the "Effective Date"), by and between the **BOROUGH OF MALVERN** (the "Seller") and

(the "Buyer"). In consideration of the mutual covenants, agreements and promises of the parties contained herein, the adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. PROPERTY. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms and conditions of this Agreement the parcel of vacant land located at Northeasterly corner of Bridge Street and Old Lincoln Highway, in the Borough of Malvern, Pennsylvania, UPI # 2-4-11.1, together with all easements, rights of way, licenses, privileges, hereditaments and appurtenances, if any, belonging to or inuring to the benefit of the land (the "Property"). The parties acknowledge that this Agreement is being executed in connection with a public bid process of the Seller, and this Agreement shall only be valid upon award of the successful bid to Buyer and execution of this Agreement by Seller.

2. TERMS. The purchase price payable hereunder shall be

_____ DOLLARS (\$_____.00)

("Purchase Price") payable as follows:

Ten Percent (10%) provided by Buyer with their bid: \$ _____

Balance to be paid at closing of title, in cash
or by certified or bank cashier's check (subject
to adjustment at closing in accordance with
this Contract) \$ _____

TOTAL PURCHASE PRICE \$ _____

3. SETTLEMENT. Settlement is to be made within sixty (60) days after award of the bid to Buyer by an Ordinance to be adopted by the Borough Council of the Borough of Malvern, or another date agreed to by the parties. Settlement shall be at the offices of Seller, or at such other location or in such other manner as the parties hereto shall mutually agree upon. For purposes of this Agreement, "Settlement" means the time when the deed as required hereunder is delivered by Seller, and the balance of the Purchase Price payable to Seller hereunder is delivered to Seller and all other matters incidental or necessary to the purchase and sale of the Property occur. At Settlement, Seller shall deliver the following:

(a) **Deed.** A Special Warranty Deed for the Property in form reasonably acceptable to Buyer, executed and acknowledged by Seller and suitable for recording.

(b) **Title Affidavits.** Reasonable and customary affidavits and other documents requested by Buyer's title insurance company to issue to Buyer a standard title insurance policy, including but not limited a Seller's FIRPTA affidavit.

(c) **Possession.** Possession of the Property shall be delivered at the time of Settlement by deed of Special Warranty. At the time of Settlement, the Property shall be vacant and not subject to any leases or tenancies. Seller is not responsible for removing debris or otherwise clearing out the Property.

4. CONDITION OF PROPERTY. THE PROPERTY IS BEING SOLD "AS IS, WHERE IS" IN ITS PRESENT CONDITION AND WITH ALL FAULTS, AND SELLER HAS NOT AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO THE PROPERTY, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH HEREIN THE DEED TO BE DELIVERED AT SETTLEMENT), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, VALUATIONS, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATED TO OR AFFECTING THE ECONOMIC, FUNCTIONAL, ENVIRONMENTAL OR PHYSICAL CONDITION OF THE PROPERTY. BUYER HAS BEEN GIVEN THE OPPORTUNITY TO CONDUCT BUYER'S OWN DUE DILIGENCE OF THE PROPERTY AND WILL BE RELYING SOLELY ON ITS DUE DILIGENCE IN COMPLETING THE PURCHASE OF THE PROPERTY. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY EXIST AT THE PROPERTY. BUYER HEREBY DISCLAIMS THE EXISTENCE OF OR RELIANCE UPON ANY WARRANTY OR IMPLIED WARRANTY INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. BUYER EXPRESSLY AGREES THAT SELLER IS NOT LIABLE OR BOUND IN ANY MATTER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY AGENT, EMPLOYEE, BROKER, OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO HEREIN.

5. TITLE; LIENS, ETC. Title to the Property is to be good and marketable and such as will be insured at regular rates by any responsible title insurance company. Conveyance shall be by fee simple deed of special warranty. The Property is to be conveyed clear of all liens and mortgages; subject, however, to all easements, rights, rights of way, liens and encumbrances and matters which a title search and/or an accurate survey would disclose.

6. TAXES; OTHER CHARGES. All real estate taxes and assessments, including without limitation, county, Borough, and school district real estate taxes assessed against the Property shall be apportioned between Seller and Buyer as of the date of Settlement on a per diem basis, without discount or penalty and on the basis of the fiscal year of the authority levying same. Seller is exempt from realty transfer tax and all realty transfer taxes imposed by any governmental authority upon the conveyance of the Property shall be paid solely by Buyer. Buyer shall pay for all title insurance premiums and all recording fees for the deed and other documents to be recorded at the Closing. Each party shall bear its own counsel fees. Buyer shall pay costs and expenses, if any, in connection with obtaining any financing for the purchase of the Property.

7. FIRE LOSS/ CONDEMNATION. The risk of loss or damage to the Property by fire, condemnation or otherwise, until transfer of title at Settlement, is assumed by Seller. Seller shall have the right, but not the obligation, to cure any damage or loss by fully repairing or fully restoring the Property to at least its condition at the date of this Agreement prior to Settlement and obligate Buyer to close the sale in accordance with this Agreement. If Seller decides not to cure, Buyer shall have the right to close the sale in accordance with this Agreement and accept an assignment of all insurance and/or condemnation proceeds or to terminate this Agreement.

8. AGENCY. Seller and Buyer each agree to indemnify, defend and hold each other harmless from and against all claims, demands, causes of action, loss, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising from any claims for commissions made by any broker, finder or other intermediary, claiming to represent the indemnifying party. The provisions of this Section shall survive Settlement or termination of this Agreement.

9. REPRESENTATIONS AND WARRANTIES.

(a) Seller warrants and represents that the persons executing this Agreement on behalf of Seller are authorized to bind Seller. All actions of Seller and other authorizations of its partners necessary or appropriate for the execution and delivery of and compliance with this Agreement have been taken or obtained and, upon their execution, this Agreement and the other documents and instruments contemplated by this Agreement, shall constitute the valid and legally binding obligations of Seller, enforceable against Seller in accordance with their respective terms. Buyer warrants and represents that the persons executing this Agreement on behalf of Buyer are authorized to bind Buyer. All actions of Buyer and other authorizations of its members necessary or appropriate for the execution and delivery of and compliance with this Agreement have been taken or obtained and, upon their execution, this Agreement and the other documents and instruments contemplated by this Agreement, shall constitute the valid and legally binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

(b) To Seller's knowledge, the Property is in compliance with all applicable federal, state, and local laws, regulations and ordinances affecting the Property including, but not limited to, zoning, building, safety, and fire codes as well as any environmental laws.

(c) Seller has not received any notice of any condemnation proceeding or other proceeding in the nature of eminent domain with respect to the Property, and, to Seller's actual

knowledge, no such proceedings are threatened. Seller has received no written notice of, nor does Seller have any actual knowledge of, any pending or threatened action or governmental proceeding relating to (i) zoning changes, (ii) increase in tax assessment (iii) or violations.

(d) Seller is not aware of any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended (“CERCLA”) present on the Property in concentrations for which remediation is required. Seller has not been identified in any litigation, administrative proceedings or investigation as a responsible party for any liability under the above-referenced law with respect to the Property.

10. DEFAULT.

(a) Default by Buyer. If the Buyer violates or fails to fulfill and perform any term or condition of this Agreement, and any such default continues uncured for five (5) days after written notice from Seller (or, in the case of failure to make payments, two (2) days), then, in such case, the Deposit may be retained by the Seller as liquidated damages for such breach, and Seller and Buyer shall be released from all liability or obligations hereunder and this Agreement shall be null and.

(b) Default by Seller. If the Seller shall commit a material default hereunder before Settlement which is not cured within fifteen (15) days after written notice thereof is given by Buyer to Seller, specifying the nature of such alleged default, then Buyer's sole and exclusive remedy shall be termination of this Agreement by giving written notice thereof to Seller prior to Seller curing such default, whereupon the Deposit shall be returned to Buyer, without interest, and this Agreement shall be null and void.

11. NOTICES. All notices called for under this Agreement of Sale shall be given in writing, delivered in person, by facsimile (with confirmation receipt retained by the party sending the notice) or by registered or certified mail, return receipt requested, as follows:

To Buyer: _____

To Seller: The Borough of Malvern
1 East First Avenue
Malvern, PA 19355
Attn: Borough Manager

12. Certain Notices to Buyer.

(a) Zoning. The Property is zoned R-6 under the Zoning Ordinance of the Borough of Malvern, Chester County, Pennsylvania, on the date hereof.

(b) Access to Public Road. Access to a public road may require issuance of a highway occupancy permit by the Department of Transportation. Any required highway occupancy permit with respect to the Premises shall be obtained by Buyer.

(c) Sewage Facilities Act Notice. There is not a currently existing and connected community/public or private sewage system available to serve the Premises. If no system currently exists the Buyer may be required to obtain a permit for an individual system or connection to a sewage system pursuant to section 7 of the Pennsylvania Sewage Facilities Act (35 P.S. §750.1, et seq.) and the Buyer should contact the local agency in charge with administering the Pennsylvania Sewage Facilities Act before signing this Agreement to determine the procedures and requirements for obtaining such permit.

(d) Recovery Fund. A Real Estate Recovery Fund exists in Pennsylvania to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real estate licensee (or a licensee's affiliates) owing to fraud, misrepresentations, or deceit in a real estate transaction and who have been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund call 717-783-3658 or 800-822-2113 (within PA) and 717-783-4854 (outside PA).

13. MISCELLANEOUS.

(a) Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

(b) Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

(c) Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

(d) Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States, or the Commonwealth of Pennsylvania, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

(e) Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws principles.

(f) Successors and Assigns; Assignment. This Agreement shall bind and inure to the benefit of Seller and Buyer and their respective heirs, executors, administrators, personal and

legal representatives, successors and permitted assigns. This Agreement and all rights granted hereunder shall not be assigned by either party without the written consent of the other party.

(g) Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected on this Agreement as the signatories. The transmission of any document by facsimile or PDF transmission containing the signature of a party hereto, including any counterpart of this Agreement, shall have the same effect as delivery of an original executed counterpart of such document, and the parties intend that each of them shall be entitled to rely on signed documents transmitted by facsimile.

(i) Interpretation. No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative or counsel prepared, drafted, requested or negotiated any provision or deletion. Each party has been represented by counsel of its own choosing, and the parties agree that this Agreement has been mutually negotiated, prepared and drafted.

(j) Recording. This Agreement shall not be recorded.

(k) Further Assurances. Buyer and Seller agree to execute all documents and instruments reasonably required in order to consummate the purchase and sale herein contemplated.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

FOR BUYER:

By: _____
Signature

Name: _____
Print

Title: _____

FOR SELLER:

THE BOROUGH OF MALVERN

Christopher Bashore, Borough Manager