

BOROUGH OF AVALON

RESOLUTION NO. 907

A RESOLUTION OF THE BOROUGH OF AVALON, COUNTY OF ALLEGHENY AND COMMONWEALTH OF PENNSYLVANIA AUTHORIZING THE PROPER OFFICERS OF THE BOROUGH TO TAKE ANY AND ALL STEPS NECESSARY TO PURCHASE CERTAIN REAL PROPERTY IN LIEU OF CONDEMNATION, LOCATED IN THE BOROUGH OF AVALON, SUCH REAL PROPERTY BEING DESIGNATED AS LOT AND BLOCK 160-E-31, AND KNOWN AS 317 HOME AVENUE, IN AN AMOUNT NOT TO EXCEED \$230,000, PLUS AN ADDITIONAL SUM FOR CLOSING COSTS, FROM FIRST CHURCH OF CHRIST, SCIENTIST, BOSTON, MASSACHUSETTS, FOR PUBLIC PURPOSES.

WHEREAS, the First Church of Christ, Scientist, Boston, Massachusetts, is the owner of certain real property located in the Borough of Avalon on which a brick and block building is erected, Deed Book Volume 10384, Page 197, and commonly known as known as 317 Home Avenue, Lot and Block 160-E-31; and

WHEREAS, pursuant to the Borough Code, 53 P.S. § 46201(4), the Borough is authorized to purchase real property as shall be deemed to be to the best interest of the Borough; and

WHEREAS, Lot and Block 160-E-31 is to be professionally appraised for the Borough of Avalon by a real estate appraiser authorized to appraise property in the Commonwealth of Pennsylvania; and

WHEREAS, an information certificate and title insurance shall be ordered for such real property by the Borough of Avalon from a title insurance company authorized to conduct title searches and issue title insurance in the Commonwealth of Pennsylvania; and

WHEREAS, Council of the Borough of Avalon has determined that it is in the best interests of the citizens of the Borough of Avalon to purchase such real property at a price not to exceed \$230,000.00, plus an additional sum for closing costs, if professionally appraised as such, if a title search does not reveal any material defects in the chain of title and if an inspection does not reveal any material defects in the building structure and components.

NOW THEREFORE, be it resolved by Council of the Borough of Avalon, and it is hereby resolved with the authority of same:

SECTION 1: The proper officers of the Borough are hereby authorized to take any and all steps necessary to effectuate the purchase and or to condemnation of the First Church of Christ property located at 317 Home Avenue, Borough of Avalon, Deed Book Volume 10384, Pages 197, Lot and Block 160-E-31, for the sum of Two Hundred and Thirty Thousand (\$230,000.00) Dollars, if appraised as such, if no materials defects exist in the structure and if no material defects exist in the chain of title.

SECTION 2: The proper officers of the Borough are hereby authorized to execute the Agreement of Sale and Purchase of Commercial Property which is attached hereto and made a part hereof.

SECTION 3: The proper officers of the Borough of Avalon are hereby authorized to deliver to the Commonwealth Land Title Company, Escrow Agent, the sum of \$5,000.00 as hand-money deposit upon execution of the Agreement of Sale.

SECTION 4: The proper officers of the Borough are hereby authorized to expend such additional sums to professionally appraise such property, to conduct a professional inspection of the property, to obtain title insurance for said property as well as such additional amounts involved in the purchase and or condemnation of the within property including without limitation, any transfer fees if required, title expenses and recording fees but excluding any broker commissions.

SECTION 5: All resolutions or parts of resolutions conflicting herewith are repealed insofar as they conflict herewith.

RESOLVED this 19th day of January, 1999.

ATTEST:

Janet Strachocky
Secretary

BOROUGH OF AVALON
Joseph M. [Signature]
President of Council

THIS RESOLUTION examined and approved by me
this 19th day of January, 1999.

Mayor Daniel K. Bricmont

Resolved THIS 16TH day of February 1999

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ATTEST:

Janet Strachocky
Assistant Secretary

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~~Borough of Avalon~~
Joseph M. [Signature]
President of Council

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AGREEMENT OF SALE AND PURCHASE OF COMMERCIAL PROPERTY

1. PARTIES

THIS AGREEMENT is entered into as of the date of acceptance by Seller, ("Agreement Date") by and between

FIRST CHURCH OF CHRIST, SCIENTIST, BOSTON, MASSACHUSETTS ("Seller"), c/o Richards & Kelly, LLP, Attorneys at Law, 900 Law & Finance Building, Pittsburgh, PA 15219-1546

and

BOROUGH OF AVALON, a Pennsylvania Municipality, ("Buyer"), of 640 California Avenue, Pittsburgh, PA 15202

each of the foregoing being a Party and together referred to as Parties,

WITNESSETH THAT Seller and Buyer, intending to be legally bound hereby, covenant and agree, each with the other, as follows:

2. SALE OF REAL ESTATE

Seller will, on the Closing date hereinafter specified, by Deed of General Warranty, grant and convey to Buyer, in fee simple, free and clear of all liens and encumbrances, subject only to the matters set forth in Paragraph 2.B., good and marketable title (and such as will be insurable by any reputable title insurance company at regular rates) to the following real estate ("Real Estate"):

ALL THAT CERTAIN piece or parcel of land, situate in the Borough of Avalon, County of Allegheny, Commonwealth of Pennsylvania, being, inter alia, part of Lot No. 2 in the William Jackman Plan of Lots, as recorded in the Recorder's Office of Allegheny County, Pennsylvania, at Plan Book Volume 3, page 66 as more specifically described in DBV 10384, page 197.

BEING designated as BLOCK 160-E, LOT 31 in the Deed Registry Office of Allegheny County, Pennsylvania.

HAVING ERECTED THEREON a brick and block building known and numbered as 317 Home Avenue.

SUBJECT to building lines, rights of way, easements, mining and mineral rights, restrictions, reservations and exceptions as set forth on the recorded plan and as may appear in prior instruments of record.

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BEING THE SAME PROPERTY vested in the Seller by the deed of dated December 14, 1998, and recorded in the Recorder's Office of Allegheny County, Pennsylvania on January 8, 1999, at Deed Book Volume 10384, page 197.

2.A. Together with all and singular the buildings, improvements, easements and appurtenances whatsoever thereunto appertaining, it being agreed that this sale and purchase includes:

2.A.1. All plumbing, heating, ventilation, air-conditioning and electrical systems and fixtures appurtenant thereto and forming a part of the improvements thereon erected;

2.A.2. All mechanical elements and systems and fixtures included in the sale and purchase are taken in "as-is" condition;

2.A.3. All landscaping.

2.B. Buyer shall take title to the Property subject to the following:

2.B.1. Building and use restrictions of record, provided, however, that said restrictions will not materially interfere with the use of the Property or at any time require the removal or alteration of the presently existing buildings or appurtenant structures thereupon;

2.B.2. Vehicular or pedestrian easements of record affecting the Property and being contiguous to the front, rear or side lot lines;

2.B.3. 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 will not materially interfere with the use of the Property or at any time require the removal or alteration of the presently existing buildings or appurtenant structures thereupon;

2.B.4. Prior grants, reservations or lease of coal, oil, gas or other minerals as shown by instruments of record; and

2.B.5. Easements apparent upon inspection of the Property.

3. PERSONALTY AND OTHER ASSETS INCLUDED IN SALE

3.A. This sale includes no unscheduled personal property.

4. PROPERTY

The real estate and improvements which are the subject of this sale and purchase are collectively referred to herein as the "Property".

5. PURCHASE PRICE

Buyer will purchase the Property and pay therefor the sum of Two Hundred Thirty Thousand and No/100ths Dollars (\$230,000.00) as follows:

S.A. The sum of Five Thousand and No/100ths Dollars (\$5,000.00) hand-money deposit upon signing of this Agreement which sum is to be held in escrow by Commonwealth Land Title pursuant to applicable law and regulation. The hand-money will be held by Commonwealth Land Title pending Closing and deposited by Escrow Agent in a non-interest-bearing escrow account.

S.B. The balance of Two Hundred Twenty-Five Thousand and No/100ths Dollars (\$225,000.00) in cash or certified funds at Closing and delivery of deed.

6. PRE-CLOSING INSPECTION

Prior to Closing, Buyer will be permitted on reasonable notice to Seller and at a reasonable time to enter the Property to inspect the same.

7. CLOSING

Unless otherwise agreed in writing, closing will be held on February 23, 1999 ("Closing"). If Closing does not occur on the said Closing date, either Seller or Buyer may, by written notice to the other, declare time to be of the essence of this Agreement. Such notice must contain a declaration that time is of the essence and must fix the time, place in Allegheny County and date of Closing, which date may not be on a Saturday or Sunday or sooner than fifteen (15) days nor later than thirty (30) days following the effective date of the giving of such notice.

8. PRORATION ITEMS

Water and sewage charges will be prorated as of Closing. County and municipal real estate taxes will be prorated on a calendar year basis; school district real estate taxes will be prorated on a fiscal year basis. All real estate tax proration shall be based on the real estate taxes, if any, levied or estimated to be levied by each taxing body. The cost of real estate transfer taxes, if any, will be divided equally between Seller and Buyer.

9. SELLER'S EXPENSE

Seller will be responsible for cost of deed preparation and all matters of the title clearance and a reasonable settlement charge of the closing agent for securing municipal, zoning and tax certifications and for making disbursements at Closing on behalf of Seller.

10. POSSESSION

10.A. Possession of the Property will be delivered to Buyer broom-clean and free of debts at Closing. Seller will maintain and repair the Property in as good condition as it is now, except for ordinary wear and tear, until delivery of the Property to Buyer. As of Closing, Seller agrees to terminate all contracts

for services relating to the operation or maintenance of the Property unless Seller and Buyer otherwise agree in writing.

10.B. In the event that possession of the Property is delivered to Buyer prior to delivery of deed or in the event that Seller remains in possession of the Property 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 hereby authorizes and empowers any attorney of the Court of Common Pleas of the Allegheny County, Pennsylvania, appear for said party and confess judgment in ejectment for possession together with judgment for costs and reasonable attorneys fees against said party and all persons claiming under said party; and such defaulting party hereby further agrees 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 will be sufficient warrant therefor.

11. RISK OF LOSS - INSURANCE

Risk of loss of the Property will remain upon Seller until Closing. Seller agrees to maintain property insurance, which must include coverage of the improvements now erected upon the Property at limits of not less than the stated Purchase Price under this Agreement and to furnish Buyer with evidence of the same upon request. If there is material damage to the Property between the Agreement Date and Closing, Buyer will have the option:

11.A. To terminate this agreement by giving Seller written notice of such termination within 30 days after becoming aware of such damage or before Closing, whichever is earlier, whereupon all monies paid by Buyer on account of the purchase price will be returned to Buyer and upon such return this Agreement will be null and void, or

11.B. To proceed to Closing according to this Agreement and pay the purchase price in full, in which event Seller will assign to Buyer any insurance proceeds allocable to the Property to which Seller may be entitled as a result of such damage under the policy or policies required to be maintained by Seller as above provided.

11.B. If Buyer fails to give any notice, Buyer will be conclusively deemed to have chosen option

12. DISABILITIES ACT REQUIREMENTS

Seller represents and warrants that to the best of its knowledge no legal action has been instituted or threatened, nor has any federal, state or local governmental agency given notice, regarding any alleged violation of the Federal Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. or any similar state or local law with respect to the Property. Seller also represents that, to its knowledge, no tenant in the Property is currently involved with any alleged violation of the Americans with Disabilities Act or any similar state or local law.

13. ZONING AND OTHER ORDINANCES

Seller warrants that the Property's present use is in compliance with the zoning classification and that there exists no notice of any uncorrected violations of housing, building, safety or fire ordinances or codes. Seller represents that Seller is unaware of any proposed, pending or threatened change in the Avalon Borough Zoning Code or in any housing, building, safety or fire ordinances or codes which apply to the Property.

14. SEWAGE FACILITY

Seller hereby represents to Buyer that the Property is serviced by a community sewage system.

15. EMINENT DOMAIN

This Agreement is being entered in lieu of condemnation and the property is intended to be used for public purposes.

16. MUNICIPAL IMPROVEMENTS

Seller hereby warrants and affirms that it has no knowledge of any proposed municipal claims affecting the Property.

17. ENVIRONMENTAL PROVISIONS

Seller warrants and represents to Buyer that Seller has no knowledge of the placement, presence or existence of any Hazardous Substance in, on or about the Property. "Hazardous Substance" means any substance which (i) is designated as hazardous, toxic, dangerous or similarly under any Environmental Law; (ii) is otherwise regulated under any Environmental Law or by any governmental or quasi governmental agency; or (iii) is a hazard to health, safety or property values. Without limiting the foregoing, Hazardous Substances shall include underground storage tanks, asbestos, urea formaldehyde insulation, PCB's oil and waste.

18. DEFAULT

In the event of default:

18.A. By Buyer: Seller may, at Seller's option, elect to:

18.A.1.

Retain all moneys paid on account of the purchase price as liquidated damages, in which event this Agreement shall thereupon become null, void and unenforceable. It is hereby agreed that, without resale, Seller's damages will be difficult of ascertainment and that all moneys paid on account of the purchase price constitute a reasonable liquidation thereof and not a penalty.

Buyer and Seller each represent and warrant to the other that they have had no dealings with any person, firm, broker or finder in connection with the negotiation of this agreement and/or the consummation of the purchase and sale contemplated herein, and they have no knowledge that any broker or other person, firm or entity is entitled to any commission or finder's fee in connection with this transaction as a result of any dealings or acts of such party.

20. BUYER AND SELLER WARRANTIES CONCERNING BROKER

19.B. Property Sold "As Is". Seller will promptly notify Buyer in writing of any material change affecting the Property that becomes known to Seller prior to the Closing. Buyer hereby acknowledges that, except as otherwise stated in this Agreement, Buyer is purchasing the Property in its existing condition and will, by the time called for herein, make or have waived all inspections of the Property Buyer believes are necessary to protect its own interest in, and Buyers' contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, warranties, inducements, promises, agreements or assurances, oral or written, concerning the Property, or any aspect of the Occupational Safety and Health Act, hazardous-substance laws, or any other act, ordinance or law, have been made or given by either party or Broker, or relied upon by either party hereto.

19.A. Condition of Property. Seller has no actual knowledge of any material defects in or relating to the Property or of the violation of any code, ordinance, or regulation.

19. REPRESENTATIONS AND WARRANTIES OF SELLER REGARDING CONDITION OF PROPERTY AND BUYER'S ACKNOWLEDGMENT OF DISCLAIMER

provided, however, that no such election by Buyer shall be final or exclusive until full satisfaction shall have been received by Buyer.

- 18.B.1.1. An action for specific performance;
- 18.B.1.2. An action at law for damages including, but not limited to the items in Paragraph 19.B.1. hereof, consequential damages, loss of bargain and reasonable attorneys' fees.

18.B.1. Waive any claim for loss of bargain and consequential damages, in which event Seller hereby agrees to repay to Buyer all moneys paid on account of the purchase price and, in addition, reimburse Buyer for all direct, out-of-pocket costs and expenses including, but not limited to, title examination; survey; pest, environmental and other property examinations; and reasonable attorneys' fees. In lieu thereof, however, Buyer may elect either or both of the following remedies:

18.B. By Seller: Buyer may, at Buyer's option, elect to:

This Agreement and all of its terms and conditions shall extend to and be binding upon the Parties hereto and upon their respective successors and assigns.

24. SUCCESSION

Buyer will not record this Agreement and any such recording will constitute default by Buyer hereunder.

23. COVENANT NOT TO RECORD

This Agreement constitutes the final and complete understanding and Agreement between Seller and Buyer relating to the subject matter hereof, all prior understandings, oral or written to the contrary notwithstanding, being merged herein. This Agreement may not be changed, modified or amended, in whole or part, except in writing, signed by Seller and Buyer. Wherever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Paragraph headings are inserted solely to assist a reader in locating subject matter and are not to be considered subject matter or be considered to form part of the text of this Agreement for any other purpose.

22. ENTIRE CONTRACT

21.B. The effective date of giving any notice is the second business day following the date of posting if the notice is mailed or on the day that delivery of the notice was made or attempted to be made at the address of the party to which the notice is directed.

21.A.2. TO BUYER:

Borough of Avalon, a Pennsylvania Municipality
640 California Avenue
Pittsburgh, PA 15201

21.A.1. TO SELLER:

First Church of Christ, Scientist, Boston, MS
c/o Richards & Kelly, LLP, Attorneys at Law
900 Law & Finance Building
Pittsburgh, PA 15219-1546

21.A. Formal tender of deed and of purchase price are hereby waived. Except as otherwise provided herein, any notices between the Parties hereto must be in writing and 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 their respective addresses. Unless Seller or Buyer notify the other in writing of a change of address, all notices or communications required or relating to this Agreement, to be effective, must be mailed or delivered as follows:

21. WAIVER OF TENDER - NOTICES

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25. **CERTIFICATION OF NON-FOREIGN STATUS OF SELLER**

Section 1445 of the Internal Revenue Code (the Foreign Investors in Real Property Tax Act) provides that a buyer of property located in the United States must withhold tax if the seller is a foreign person. Seller hereby certifies that Seller is not a foreign person within the meaning of Section 1445 (b)(2) of the Internal Revenue Code. Seller understands that this certification may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both.

26. **STATUTORY 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 OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. *[This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]*

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.

27. **ADDITIONAL PROVISIONS**

27.A.1. This Agreement is subject to the Buyer obtaining within fifteen (15) days of the effective date of this Agreement, at Buyer's sole expense, an appraisal of the Property setting forth an appraised value of not less than \$230,000.00. Should the appraisal not satisfy this condition, then Buyer shall within five (5) days of receipt of the appraisal, notify Seller in writing of its election to proceed with its purchase at the agreed consideration of \$230,000.00 or terminate this Agreement, in which event this Agreement shall become null and void and the hand money deposited shall be released to the Buyer.

27.A.2 This Agreement is further subject to the Buyer obtaining approval through proper Resolution(s) of the Council of the Borough of Avalon.

27.B. **INSPECTION OF PROPERTY**

27.B.1. **Right to Inspect.** Within 15 days after the Agreement Date ("Inspection Period"), Buyer or Buyer's authorized representatives may inspect and test the Property at Buyer's expense. Seller hereby grants access to the Property to the

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persons designated by Buyer, upon reasonable notice to Seller, to perform inspections and tests. Buyer or Buyer's authorized representatives may make any inspections and tests of the Property including, but not limited to, building structure and components -- foundation and roof, heating, plumbing and electrical systems (including service lines), central air-conditioning, machinery and equipment, pest infestation including wood-boring insects, and compliance with building codes, the Americans with Disabilities Act of 1990, 43 U.S.C. § § 12101 *et seq.*, as amended, and other applicable statutes and ordinances. Such inspection shall not unreasonably interfere with the business operations of Seller or any tenant occupying the Property.

27.B.2.

Indemnification. Buyer agrees to (a) bear the cost and expense of any damage to the Property and (b) indemnify, hold harmless, and defend Seller from any claims for damages resulting from injury to persons or property which in either case results or arises from any act or omission by Buyer or Buyer's representatives, architects, engineers, or property inspectors in connection with inspections and tests made by or on behalf of Buyer.

27.B.3.

Notice to Seller. Within five (5) days after the Inspection Period, Buyer shall deliver written notice to Seller that either:

(a) Buyer waives any right that Buyer may have under this paragraph; or

(b) The inspection or tests of the Property are unacceptable to Buyer and the Agreement is terminated as of five (5) days following the date of delivery of notice.

If Buyer does not deliver the written notice referred to in this Paragraph 27.B.3. within five (5) days after the Inspection Period, Buyer waives any right that Buyer may have under this provision.

27.B.4.

Buyer's Termination. If Buyer elects to terminate pursuant to Paragraph 27.B.3.(b), hercof, the hand money shall be returned to Buyer forthwith and without deduction and this Agreement shall be null and void and of no further force or effect, except only that Seller shall be entitled to retain a portion of the hand money equal to the cost to repair any damage caused as a result of Buyer's inspection of the

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Property to the extent that Buyer has failed to cover such costs in accordance with Paragraphs 27.B.2. hereof, and the balance, if any, of the hand money shall be returned to Buyer. If there is damage, the Escrow Agent shall retain the hand money until any dispute between Buyer and Seller is resolved.

27.B.5. Time of the Essence. Time shall be of the essence as to the provisions of this Paragraph 27.

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED BY ALL PARTIES. EACH PARTY SHOULD CONSULT THEIR ATTORNEY PRIOR TO SIGNING THIS AGREEMENT.

WITNESS the due execution hereof by Buyer this 19 day of January, 1999.

Witness:

[Signature]

Borough of Avalon
[Signature] (Seal)
Buyer

THIS AGREEMENT will become null and void and the hand-money deposit returned to Buyer, at the option of Buyer, unless a copy hereof accepted by Seller is delivered to Buyer within ten (10) days from the date of execution by Buyer.

SELLER'S ACCEPTANCE

NOW, this _____ day of _____, 1999, the foregoing Agreement is hereby accepted by Seller.

Witness:

**FIRST CHURCH OF CHRIST, SCIENTIST
BOSTON, MASSACHUSETTS**

Seller (Seal)