

ORDINANCE NO. 2022-00

**AN ORDINANCE OF RADNOR TOWNSHIP, DELAWARE COUNTY,
PENNSYLVANIA, APPROVING AN AGREEMENT OF SALE BETWEEN
THE TOWNSHIP OF RADNOR AND SPICEY BRICKS, LLC FOR THE
PURCHASE OF 26 WENTWORTH LANE**

WHEREAS, Radnor Township and Spicy Bricks, LLC have negotiated an agreement for the purchase of 26 Wentworth Lane (TMP 36-32-339-000) in Radnor Township; and

WHEREAS, § 3.01 G. of the Radnor Township Home Rule Charter permits the purchase of real property by the Township by ordinance.

NOW, THEREFORE, be it hereby *ENACTED* and *ORDAINED* that the Radnor Township Board of Commissioners hereby approves the Agreement of Sale with Spicy Bricks, LLC, a copy of which is attached hereto and incorporated herein, and further authorizes the Township Manager to execute the Agreement on behalf of the Township.

ENACTED AND ORDAINED this 12th day of September 2022.

RADNOR TOWNSHIP

By: _____
Name: Moira Mulroney
Title: President

ATTEST: _____
William White, Secretary

AGREEMENT OF SALE

THIS AGREEMENT is made this _____ day of _____, 2022 by and between, **Radnor Township**, a municipal subdivision of the Commonwealth of Pennsylvania (hereinafter referred to as “*Buyer*”) and **Spicy Bricks LLC** (hereinafter collectively referred to as “*Seller*”).

In consideration of the mutual and several covenants and agreements set forth below, the Buyer and Seller, intending to be legally bound, covenant and agree as follows:

1. The Transaction.

Subject to the terms and conditions set forth below, Seller agrees to sell, and Buyer agrees to purchase all that certain real estate located at 26 Wentworth Lane, Radnor Township, Delaware County, Pennsylvania 19010 designated as Parcel ID 36-07-05123-01 and Tax Map No. 36-32-339:000 together with all buildings, improvements and structures located thereon (hereinafter referred to collectively as “*Premises*” or “*Property*”).

2. Purchase Price.

The total purchase price for the Property shall be Four Hundred Sixty-Five Thousand Dollars (\$465,000.00), which shall be paid to Seller as follows:

a. Within three (3) days of the full execution of this Agreement, Buyer shall deposit with Buyer’s Title Insurance Company (“**Escrow Agent**”), the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the “**Deposit**”) until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Said deposit money shall be held in a non-interest bearing escrow account.

b. At the time of settlement, the further sum in an amount equal to the balance of the purchase price or Four Hundred Forty Thousand Dollars (\$440,000.00) in cash, certified check, or by check of the title insurance company insuring title to the Property for the Buyer.

3. Title and Conveyance.

a. Title to the Property shall be conveyed in fee simple by Special Warranty Deed.

b. Title shall be good and marketable and insurable as such at regular rates by any reputable title company authorized to do business in Pennsylvania and selected by Buyer, and shall be free and clear of all liens, restrictions, leases, encroachments, title company objections, encumbrances, and easements, excepting, however, the following: those certain lease agreements and occupancy permits, if any, existing deed restrictions (if any); historic preservation restrictions or ordinances; building restrictions; ordinances; easements of roads; easements visible upon the ground; easements of record; and privileges or rights of public service companies, if any. If title to the Property to be conveyed hereunder is defective or unmarketable, or any part thereof is subject to liens, encumbrances, easements, encroachments, conditions or restrictions other than those excepted

above, Seller shall remedy or remove such defects prior to settlement. Copies of all existing leases, occupancy permits and rent rolls shall be supplied to Buyer upon execution hereof.

c. In the event the Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company, subject to aforesaid, Buyer shall have the option of taking such title as the Seller can give without abatement of price or of being repaid all monies paid by Buyer to the Seller on account of the purchase price and the Seller will reimburse Buyer for any costs incurred by the Buyer for those items specified in Section 3(d) items (1), (2), (3) below; and in the latter event there shall be no further liability or obligation on either of the parties hereto and this Agreement shall become NULL AND VOID and all copies will be returned to Seller's Agent for cancellation.

d. The Buyer will pay for the following:

(1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any.

(2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any.

(3) Appraisal fees.

(4) Buyer's normal settlement costs and accruals.

e. Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an adequate legal description of the Property (or the correction thereof), shall be secured and paid for by the Seller.

4. Apportionments, Adjustments and Costs.

At the time of the Closing of the purchase and sale of the Property, taxes, rents, water fees, sewer fees, condominium fees, interest on mortgage encumbrances, together with any lienable municipal service fees, if any, shall be apportioned pro rata, on a fiscal year basis as to school taxes, on a calendar year basis as to county, institution and municipality taxes.

5. Documents.

At Closing, Seller shall deliver the following documents to Buyer or Buyer's title insurance company:

a. Affidavits of Title as to the Premises and sufficient proofs necessary to remove all title exceptions from the Premises (except those to which the title is subject pursuant to Paragraph 4, or to those which Buyer may consent).

b. A fee simple deed of special warranty for the Premises, in recordable form, executed by the Seller.

c. Such other documents as may be reasonably necessary to carry out the purposes of this Agreement.

6. Conditions Precedent.

All of the following conditions shall be considered material conditions to this Agreement of Sale and if either party shall fail to comply with the same, this Agreement shall become NULL AND VOID and all copies will be returned to Seller for cancellation.

a. It is agreed that the acquisition of the Premises by Buyer shall be considered a transfer of a deed in lieu of condemnation.

b. Seller agrees to fully cooperate with Buyer and hereby grants to Buyer and Buyer's agents and contractors, upon reasonable advance notice, the right to enter upon the subject Property to conduct all necessary inspections, appraisals, tests, evaluations, feasibility studies and any other similar tests. Buyer agrees that following the completion of any and all such tests Buyer shall restore the subject Property to its original condition as it existed immediately prior to Buyer's inspection. Any of Buyer's agents and contractors who may enter upon the Property in connection with this paragraph, shall provide the appropriate certificate of insurance for the services to be provided by such agent or contractor.

c. Seller shall be required to have any and all existing mortgages or liens satisfied, cleared and removed prior to or at the time of settlement.

d. Seller shall complete and submit to Buyer a Seller's Property Disclosure Statement at or prior to the execution of this Agreement.

e. Seller shall satisfactorily remove all personal property and debris from the Property prior to Closing:

f. Buyer shall have the right to conduct a pre-Closing inspection to verify that all items listed in paragraph 6e have been satisfactorily removed prior to Closing.

g. To the extent they exist and are within Seller's possession, Seller shall provide Buyer with a copy of all lease agreements, service and maintenance contracts, building plans, environmental inspection reports, engineering reports, existing surveys, real property tax bills, and a copy of the Certificate of Occupancy within ten (10) days after the full execution of this Agreement. Copies of all existing leases, occupancy permits and rent rolls, if any, shall be supplied to Buyer upon execution hereof.

7. Closing.

Closing ("**Closing**") shall take place on a date within forty-five (45) days after the full execution of this Agreement.

8. Recording.

This Agreement shall not be recorded in the Office of the Recorder of Deeds of any county or in any other office for the recording of documents.

9. Transfer Taxes.

Payment of Real Estate Transfer Taxes assessed as a result of this transfer shall be divided equally between Seller and Buyer although the parties anticipate that this transfer will be exempt.

10. Entry Prior to Closing/Feasibility.

a. Buyer and Buyer's agents, representatives, engineers, and other persons designated by Buyer shall have the right from time to time from and after the date of this Agreement to enter upon the Premises upon the giving of reasonable notice to Seller for purposes of inspection, surveying, preparation of plans, taking of measurements, to conduct non-invasive tests, and generally for the ascertainment of the condition for the Premises and the obtaining of such other information and data as may be necessary by Buyer to what environmentally sensitive or aesthetic features deserve particular protection, subject only to Buyer's obligation to restore the Premises to its prior condition. Upon execution of this Agreement, Seller shall deliver to Buyer, or make available to Buyer without cost, all existing plans, surveys, environmental reports, soil and wetland analysis reports, and such other reports or materials, if any, pertaining to the Premises in Seller's possession or control which shall be returned to Seller in the event that Closing does not occur. Access by the Buyer or its representatives shall be subject to the following:

b. Seller shall have no responsibility or liability whatsoever for any bodily injury, or loss, theft, damage or destruction of personal property caused by Buyer's entry or that of Buyer's agents, representatives and engineers onto the Premises. Buyer shall bear all risk of loss of such bodily injury or damage to personal property

c. Buyer hereby releases Seller and Seller's agents, employees, and representatives of and from any liability to Buyer or Buyer's agents, representatives and engineers for personal injuries or property damage arising in connection with entering the Premises prior to closing.

11. Maintenance and Risk of Loss.

Seller shall bear risk of loss from fire or other casualties until time of Closing. Seller shall keep the property and improvements, if any, covered by fire and hazard insurance with extended coverage through a reputable insurance company through the date of settlement. Proof of said insurance shall be supplied to Buyer upon request. In the event of damage to any property included in this sale by fire or other casualties, not satisfactorily repaired or replaced prior to settlement, Buyer shall have the option of rescinding this Agreement and receiving all monies paid on account or of accepting the property in its then condition. Buyer is hereby notified that they may insure their equitable interest in the Premises as of the time of the acceptance of this Agreement.

12. Notices and Assessments.

a. Seller represents as of the approval date of this Agreement, that no public improvement or assessments have been made against the Premises which remain unpaid and that no notice by any government or public authority has been served upon the Seller or anyone on the

Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected unless otherwise specified herein.

b. Seller will be responsible for any notice of improvements or assessments received on or before the date of this Agreement unless improvements consist of sewer or water lines not in use.

c. Buyer will be responsible for any notice served after the date of this Agreement except for notices for improvements consisting of sewer or water lines not in use received prior to settlement for which Buyer will be responsible if they take title hereto.

13. Condition of Property.

a. Seller agrees to maintain the condition of the Property, including all existing improvements, if any, in the same condition as at present until Closing, normal wear and tear excepted. Notwithstanding the foregoing, and except for the items to be removed by Seller as set forth in paragraph 6, the Property and improvements, if any, are being conveyed in their "As-Is" and "Where-Is" condition.

b. Possession is to be delivered by deed and keys to the dwelling.

14. Condemnation.

Seller shall notify Buyer within three (3) business days of its receipt of notice from the planned or actual exercise of the right of eminent domain for all or any portion of the Premises by a government or municipal authority other than the Township. Any taking or condemnation for any public or quasi-public purpose, or use by any competent authority, other than the Township, in appropriate proceedings, or by right of eminent domain that has a material adverse affect on the Premises shall permit Buyer, at its option, to terminate this Agreement by giving notice to Seller within thirty (30) days of Buyer's receipt of such notice of condemnation. If Buyer does not terminate this Agreement under this Paragraph 17, the parties shall share in any awards or other proceeds received by Seller with respect to such taking as their interests are affected. If Buyer terminates this Agreement as provided in this Paragraph 17, the Deposit shall be returned to Buyer by the escrow holder. Buyer shall simultaneously execute and deliver such documents to Seller in recordable form terminating Buyer's equitable interest in the Property.

15. Seller's Warranties.

To the best of Seller's actual knowledge, Seller warrants and represents to Buyer as of the date of this Agreement and as of the date of Closing, as follows:

a. There are no leases, tenancies, licenses or other rights of occupancy or use for any portion of the Premises.

b. That Seller has received no notice from any governmental agency, including the Township of Radnor, the Department of Environmental Protection, or the Environmental Protection Agency, advising Seller of any ordinance, statute, or regulation violation affecting or pertaining to the Premises.

c. That to the best of Seller's actual knowledge, without independent investigation, the Premises does not contain any underground storage tanks.

d. That there is no action, suit or other proceeding pending or, to the best of Seller's knowledge, threatened against or affecting the Premises that would or could affect title to the Premises or Buyer's ability to conserve the Premises.

16. Default - Time of the Essence.

a. The said time for Closing and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement.

b. Should Buyer violate or fail to fulfill and perform any of the terms or conditions of this Agreement, then and in that event, upon ten (10) days written notice of such default and opportunity to cure, as Seller's sole remedy, this Agreement of Sale may be terminated by Seller and Seller may retain the Deposit as liquidated damages, and in such event, Seller and Buyer shall each be released from all liability or obligation and this Agreement shall be and become null and void. This shall be Seller's sole remedy at law or in equity.

c. Should the Seller violate or fail to fulfill and perform any material terms of this Agreement, then in such case, upon ten (10) days written notice of such default and opportunity to cure, Buyer shall be entitled to bring an action in equity for specific performance or recover damages at law for breach of contract including reasonable counsel fees and costs.

17. Miscellaneous.

a. As to the Premises, all real estate and school taxes shall be apportioned pro rata as of the date of Closing.

b. Tender of an executed Deed and purchase money is hereby waived.

18. Broker Commissions.

Arlington Group Real Estate LLC shall be paid a two and half (2.5%) percent commission based upon the total Purchase Price of the Property. This Fee shall be paid by Seller at Settlement.

19. Miscellaneous Fees and Conditions.

a. In addition to the Purchase Price payable to Seller, and not in lieu thereof, Buyer shall pay to Rockwell Glynn, L.P., a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania having an address of 124 E. State Street, Wayne, PA 19087 ("Rockwell"), at Closing, the sum of One Hundred Eight Thousand Dollars (\$108,000.00). This disbursement is for the reimbursement of Rockwell for all costs spent for surveying fees, engineering fees, architecture fees, administrative fees, legal fees, all costs for any and all application and permit fees and lost profits in connection with purchase and development of the Property. This disbursement is contingent upon Buyer purchasing the Property.

With Copy To: Grim, Biehn & Thatcher
104 S. Sixth Street
P.O. Box 215
Perkasie, PA 18944
Attention: John B. Rice, Esquire

26. Signature.

This Agreement may be executed in multiple photocopied or pdf counterparts, each of which said executed counterpart shall be deemed an original for all purposes and may be delivered by facsimile or electronic mail. This Agreement will become binding and effective and will have been delivered when one or more counterparts containing, in aggregate, the signatures of all parties have been delivered in person, by regular mail, by facsimile or electronic mail with a pdf attachment of the signature page, or by any other similar means. The parties further agree that any facsimile or electronic mail communication shall be deemed to have been fully delivered and shall be as effective as an original signature and shall be equally binding as though delivered directly by hand to each other.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have set their hands and seals on the dates below written:

APPROVAL BY SELLER: SPICY BRICKS LLC

Witness

By: _____
Luciano DiFelice

_____(Date)

APPROVAL BY BUYER: RADNOR TOWNSHIP

Witness

By: _____
William White, Manager