

**MEMORANDUM OF UNDERSTANDING
AND OFFER TO PURCHASE**

This Memorandum of Understanding (“Memorandum”) is made this ___ day of May ___, 2019 by and between City of Edgerton, a Wisconsin municipal corporation, (the “City” or “Buyer”) and WIS-TEK, LLC., a Wisconsin limited liability corporation, (the “WIS-TEK” or “Seller”) (collectively, the “Parties”).

RECITALS

WHEREAS, WIS-TEK is the owner of property located at 407 N. Main Street in the City of Edgerton, WI (“Property) **Exhibit A**; and

WHEREAS, WIS-TEK has contacted the City to determine its willingness to purchase the Property; and

WHEREAS, the City desires to purchase the Property provided it can be determined that the present environmental conditions do not present a bar to its future development; and

WHEREAS, to determine the feasibility of the future development of the Property the City needs to engage in reasonable examination of the property; and

WHEREAS, the Parties agree that the City may, if it determines it necessary, raze the existing structure prior to closing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the foregoing Recitals which are fully incorporated herein, the parties hereto intending to be legally bound, hereby agree as follows:

AGREEMENT

Section 1. **Effective Date; Term.** The term of this Memorandum shall commence as of the above date (the “Effective Date”) and end on the earlier of the completion of the Due Diligence period or notice as provided herein.

Section 2. **Consideration.** The base purchase price of the Property shall be \$250,000.00 (Two Hundred Fifty Thousand and 00/100 Dollars) (“Purchase Price”).

Section 3. **Voluntary Sale.** Seller acknowledges that this transaction is intended as a voluntary sale and not an exercise of the power of eminent domain by the Buyer. Seller has been advised that the Buyer has made no determination that acquisition of the Property by eminent domain is necessary, but rather, has determined that it would not acquire the Property in the absence of a voluntary agreement. Nothing in the Purchase Agreement is intended by either party to give rise to the applicability of any of the provisions of Wis. Stats. Chap. 32, except those provisions relating to relocation assistance applicable to voluntary sales. Seller acknowledges receipt of the publications entitled *The Rights of Landowners Under Wisconsin Eminent Domain Law* and *Wisconsin Relocation Rights*.

Section 4. FIRPTA. Under penalty of perjury, Seller certifies that Seller is not a foreign person within the meaning of § 1445 of the Internal Revenue Code of 1986, as amended, and will deliver to Buyer at closing a certificate to that effect, together with Seller's taxpayer identification number.

Section 5. Access to Property. Neither Buyer's right to inspect the property nor the results thereof shall in any way limit, diminish or modify Seller's warranties and representations as set forth in the Purchase Agreement. Seller shall cooperate with Buyer in Buyer's exercise of its rights hereunder.

Section 6. Document Review Contingency.

A. Within ten (10) days after the Acceptance Date (as defined herein), Seller shall furnish and deliver to Buyer all information and documentation in its possession or control with respect to the Property, including, without limitation: (1) any previous title policies, preliminary title reports and/or title searches with respect to the Property, including copies of all documents listed as exceptions thereto; (2) any environmental studies or inspections of the Property; any soil or other physical reports or inspections with respect to the Property; (3) any previous boundary or ALTA surveys of the Property, including copies of any title exceptions noted thereon; (4) any copies of any zoning documents or land use documents related to the Property, including, without limitation, all building and use restrictions, set back requirements and design guidelines; (5) any declarations of easements, covenants and restrictions with respect to the Property; (6) any plans locating utilities, roads or other improvements located or adjacent to the Property; and (7) any copies of public or private utility easements, access agreements, or special assessment arrangements with respect to the Property.

B. Buyer's obligations under this Purchase Agreement are contingent upon Buyer's review and approval of all information and documentation described in Paragraph VI(A) above (the "Document Review Contingency") within ten (10) days of receipt ("Document Review Contingency Period"). If Buyer does not provide written notice to Seller within the Document Review Contingency Period of any objections, then this contingency shall be deemed satisfied. If Buyer provides written notice to Seller of any objections within the Document Review Contingency Period, then this Purchase Agreement will terminate and be of no further force or effect.

Section 7. Buyer's Contingencies.

A. Buyer's obligations under this Purchase Agreement are contingent upon Buyer's satisfaction or waiver of the following contingencies (each individually, a "Contingency," and collectively, the "Contingencies") on or before June 30, 2019 ("Contingency Period"):

1. **Inspection.** Buyer being satisfied, after thorough inspection and testing, with the soil condition and the general condition of the Property. Buyer or its agents, representatives and/or independent contractors, shall have an irrevocable right

and license to enter upon the Property and to conduct, at Buyer's expense, such explorations, surveys, inspections and soil tests, as Buyer deems necessary or advisable to satisfy the contingency under this Section 7. Buyer shall have the right to conduct all testing and inspections on any portion of the Property deemed necessary by Buyer.

2. Survey. Buyer obtaining, at Buyer's expense, a certified survey map of the Property ("CSM") (a) that subdivides the Property in substantially the form identified on the map attached hereto as **Exhibit A**; (b) that is in a form acceptable to the title insurance company to remove the survey exception(s) from the title policy required to be delivered hereunder; (c) that discloses no encroachments, easements, flood plains, flood zones, right-of-ways and/or other matters of record that are unsatisfactory to Buyer, in Buyer's sole reasonable discretion; and (d) that identifies the legal description and square footage thereof and the location of all building lines to Buyer's satisfaction ("Survey"). If, as a result of the examination by Buyer of the Survey, there are disclosed any encroachments, protrusions, flood plains beyond those presently known to the Buyer, overlaps or boundary line disputes, any easements or rights of way not of record, or any other matters Buyer does not approve, Buyer may give notice of such matter to Seller within twenty (20) business days following the date of delivery of the survey to Buyer. If the Buyer does not give notice of any defects pursuant to this Section within such time, then Buyer shall be deemed to be satisfied with the status of the title as evidenced by any surveys and any exceptions to title which are shown by such survey and shall be "Approved Exceptions." Should Buyer deliver notice objecting to matters of survey, within such twenty (20) business day period, Seller shall notify Buyer whether Seller is willing and/or able to cure such objections, with Seller having no duty to do so. Should Seller decline to cure such objections (a failure of Seller to respond within such time being deemed Seller's notice that it has declined to cure such objections), then by notice to Seller given within five (5) business days thereafter, Buyer may terminate this Purchase Agreement in which event the parties shall have no further obligations hereunder except those that expressly survive termination of this Purchase Agreement. Seller agrees to cooperate with Buyer in obtaining the Survey.

Upon receipt of the final CSM, Buyer shall provide a copy of the CSM to Seller for review and approval, which approval shall not be unreasonably withheld or delayed. Seller shall have five (5) days from receipt of the CSM from Buyer to provide a written objection to Buyer. If Seller does not provide such written objection to Buyer within such time period, the CSM shall be deemed acceptable to Seller.

3. Environmental. Buyer shall be satisfied with all environmental reports provided by Seller and the results of a Phase I and Phase II environmental site assessment, performed on the Property at Buyer's discretion and expense (the "Environmental Audit") (a) that is conducted and prepared by an engineer or other expert of Buyer's choice, (b) that confirms (i) there is no probable cause to indicate

that the Property, including without limitation the surface, subsurface and groundwater and all improvements located on the Property, contains any pollutants, contaminants, hazardous or toxic materials or wastes, petroleum products or any other health or environment-threatening materials in excess of legally permitted levels; (ii) the Property and all improvements located on the Property are in substantial compliance with all regulations; (iii) there is no evidence that underground storage tanks are currently located on the Property; (iv) any underground storage tanks that were previously located on the property were removed in compliance with all laws, rules and regulations established by any governmental authority with jurisdiction over the Property; and (v) any releases of hazardous materials or environmental contamination that have been identified with respect to the Property have been remediated in compliance with all laws, rules and regulations established by any governmental authority with jurisdiction over the Property, and (c) that is acceptable to the lender providing the purchase money for Buyer's acquisition of the Property, if applicable.

4. DNR Approval. Buyer obtaining written evidence from the Wisconsin Department of Natural Resources, to Buyer's satisfaction, that the Property has been issued a closure letter.

5. Blight Elimination Exemption. This Agreement is further conditioned upon the City receiving an exemption under §292.23(2)(d), Wis. Stats. for blight elimination.

6. Right to Show. Upon acceptance of this Memorandum, the City and its representatives shall have free and full access to the Property in order to show and market the Property to prospective purchasers, tenants, or developers. The City intends to redevelop the property, and in an effort to achieve such redevelopment, City intends to actively market the Property during the term of the Contingency Period.

7. Development Agreement. This Offer to Purchase is contingent upon City obtaining in City's sole discretion, a signed development agreement for the development of the property. City shall proceed in good faith to secure such a development agreement at the earliest possible date.

8. Floodplain. Buyer obtaining all the necessary approvals relating the floodplain regulations so as to allow for the redevelopment of the Property.

B. If Buyer has satisfied or agreed to waive each of its Contingencies by the end of the Contingency Period, Buyer shall give written notice thereof to Seller no later than the end of the Contingency Period.

If Buyer fails to give written notice to Seller under Section 7 B. that Buyer has satisfied or is waving each of its Contingencies, then this Purchase Agreement will terminate

and be of no further force or effect. Notwithstanding the foregoing, in the event Buyer is making a good faith effort to satisfy the Contingencies set forth in this Section, Buyer shall have the right to extend the Contingency Period for an additional sixty (60) day period upon providing written notice to Seller within thirty (30) days of the expiration of the Contingency Period.

Section 8. Notices. Any notice, payment, demand or other communication required or permitted under this Memorandum shall be deemed to have been delivered and given for all purposes if delivered personally or if sent by registered or certified mail, return receipt requested, postage and charges prepaid or sent by overnight commercial courier, addressed as follows:

Linda Bracha
3708 Enterprise Dr.
Janesville, WI 53546\
(email)

City Administrator
City of Edgerton
12 Albion Road
Edgerton, WI 53534
rflanigan@cityofedgerton.com

Section 9. Razing of Structure. The Seller understands that in order to complete a Phase II evaluation of the Property that the structure may need to be razed. If the City elects to proceed with such an evaluation, the City shall provide notice to the Seller by email and first class mail as provided herein no less than 30 days prior to such razing. The Seller waives any additional right to notice and agrees that it shall not contest such a decision or action. The City shall bear the costs of any such undertaking in full and if there is no Closing, the City shall restore the site to a level, substantially debris free condition. In no circumstances shall City's costs in razing be assessed against the Seller. The Seller further releases the City from any liability or claims it may have, including for the loss of use of the Property, which may result from the razing of the structure, except however it does not release any claims it may incur as a result of claims made by unrelated third parties.

Section 10. Closing. Closing shall take place not later than seventy-five (75) days after waiver by City of the contingencies contained in Section 7. Seller shall pay all state and county transfer fees, all title insurance fees including endorsements requested by Buyer and all recording fees.

Section 11. Property Item Removal. The Parties acknowledge that the Seller may desire to remove certain items, including equipment and items of architectural interest from the building after the effective date of this Agreement but prior to closing. If the Seller proposes to remove from the building any items, removal may occur only if the Seller provides a list of items to be removed and Buyer agrees. Removal of any items shall be done in such a manner as to not leave building in an unsafe or derelict condition. The Parties understand that such a removal may occur either before Close or in a reasonable period after Close. If the removal

occurs after Close, Seller shall provide a release and indemnification acceptable to the Buyer protecting against any claims of injury or loss associated with the removal. Any removal after Close shall be done in a manner and time so as not to hamper or impede the Buyer's use of the Property or the further development thereof.

Section 12. Broker. Seller acknowledges that the Seller's broker shall be paid any fees which may be owed as a result of the purchase/sale of the Property out of the Seller's proceeds and that the City shall have no liability for such fees.

Section 13. Entire Agreement. This Agreement reflects the entire understanding of the parties with respect to the subject matter contained herein. This Agreement shall not be changed or otherwise amended except by a written instrument executed by the parties.

Section 14. Governing Law. This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Wisconsin and all applicable laws of the United States of America.

Section 15. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Christopher Lund, Mayor

Date

Ramona Flanigan, City Administrator

Date

Date

EXHIBIT A

Legal Description:

DOTY'S SUB PT SW1/4 LOTS 6 – 14 PT LOT 15 COM SW COR LOT 6 NE 66', NELY 462', E 296.8' S756.59', W 114.75', SW 181.92', NW 222.55', NE 199.16', NW 215.29' TO POB (EXC CSM 16-299) (EXC COM NW COR LOT 11, SE 50.06', E 238.41', S 15.01', W 302.25', NE 41.60 TO POB)