

AGREEMENT OF PURCHASE AND SALE
(Part of 3100 Berlin Drive, La Crosse, WI 54603)

This Agreement of Purchase and Sale ("Agreement") is dated for reference purposes February 12th, 2021 and is made by and between WEISS COMMERCIAL REAL ESTATE, LLC as "Buyer" and the CITY OF LA CROSSE, as "Seller".

Recitals

A. Seller is owner of improved real property ("Real Property") consisting of approximately 10.85 acres located at the western portion of 3100 Berlin Drive, La Crosse, WI, together with all rights, privileges, easements, and appurtenances that benefit the Real Property (the "Property").

B. Buyer desires to purchase the Property and Seller desires to sell the Property upon the terms and conditions of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Section 1.

Purchase and Sale

Subject to the terms and conditions in this Agreement, Seller agrees to sell and Buyer agrees to purchase the Property.

Section 2.

Purchase Price

The purchase price ("Purchase Price") for the Property shall be one million three hundred fourteen thousand eight hundred nineteen and 82/100 dollars (\$1,314,819.82), or one hundred twenty-one thousand one hundred eighty-one and 55/100 dollars (\$121,181.55) per acre if the final lot size should vary from 10.85 acres, payable as follows:

- (a) Within five (5) business days after execution of this Agreement, Buyer shall deposit with a mutually agreed-upon title company ("Escrow Holder") the sum of five thousand and 00/100 dollars (\$5,000.00) ("Deposit") and these funds shall apply to the Purchase Price; and
- (b) At the expiration of the Contingency Period, Buyer shall deposit with Escrow Holder the sum of five thousand and 00/100 dollars (\$5,000.00) ("Additional Deposit") and these funds shall apply to the Purchase Price; and
- (c) The balance of the purchase price (after application of the Deposit and Additional Deposit to the Purchase Price) will be paid in cash at Closing.

Section 3.

Intentionally Omitted

Section 4.

Contingency Period

Buyer shall have 180 days following the execution of this Agreement to review the Documents (defined below), perform any inspections of the Property that Buyer deems necessary, to perform a Phase I ESA for the Property, to perform due diligence for planning construction of an industrial/warehouse building at the Property, and to obtain all municipal approvals for Buyer's intended use. Access to the Property for any inspections shall be mutually agreed upon by Buyer and Seller. Buyer, at Buyer's sole discretion, shall determine whether the aforementioned items are satisfactory to Buyer within this Contingency Period. If the aforementioned items are satisfactory for Buyer, Buyer shall waive this contingency and proceed with Closing. If any of the aforementioned items are not satisfactory to Buyer, Buyer may give notice within this Contingency Period and Deposit shall be immediately refunded. Documents will be forwarded within 5 days

of the execution of this Agreement and shall include (to the extent that they are in Seller's possession): Existing CSM or ALTA survey, restrictive covenants and any amendments, co-tenancy and shared usage agreements, easement documents concerning the Property, existing Phase I ESA, existing Title Policy, existing appraisals, and any other documents related to Property that are in Seller's possession.

Section 5.
Title

Seller shall deliver to Buyer a Title Commitment extended to the current date within fifteen (15) days of mutual execution of this Agreement, showing marketable title to the real estate. If title to all or part of the Property is unmarketable, as determined by relevant law, or is subject to liens, encumbrances, easements, conditions, restrictions, or encroachments that Buyer deems unacceptable (in Buyer's sole discretion), Buyer or Buyer's attorney shall give written notice of such defect to Seller within fifteen (15) days of receipt of the Title Commitment. Seller agrees to make every reasonable effort to perfect the title. Seller shall have fifteen (15) days to have such title defects removed or, such defects or exceptions which may be removed by the payment of money may be cured by a mutually-acceptable deduction from the purchase price at time of Closing. If Seller is unable to cure title to Buyer's satisfaction (at Buyer's sole discretion), then Buyer shall have the option to terminate this Agreement, in which case Buyer shall be entitled to refund of the Deposit. If Closing is delayed due to Seller's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds this Agreement.

Section 6.
Condemnation

If condemnation proceedings are commenced against the Property between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Property, all proceeds of condemnation awards payable to Seller by reason of the condemnation shall be paid or assigned to Buyer. If Buyer elects to terminate this Agreement pursuant to this section, Escrow Holder shall immediately return the Deposit to Buyer and neither party shall have any further duties or responsibilities under this Agreement, except for those that are stated as surviving closing.

Section 7.
Escrow

To accomplish the sale and transfer of the Property, the parties shall engage Escrow Holder. Each party shall execute such instructions to Escrow Holder (or to real estate attorneys selected by the parties if closings must be accomplished through attorneys in the local area) as are consistent with this Agreement at least fifteen (15) days prior to Closing.

Section 8.
Closing

- (a) The purchase and sale contemplated in this Agreement shall close ("Closing") at the office of Escrow Holder (or a real estate attorney representing one of the parties, if necessary) within fifteen (15) days of the expiration of the Contingency Period.
- (b) Seller shall deliver to Buyer at Closing a warranty deed in a form that is normal and usually acceptable to commercial purchasers in the county in which the Property is located and Buyer shall pay the Purchase Price to Seller. As part of the Closing, Seller shall deliver to Buyer an assignment of any contracts, warranties, and rights relating to the Property.
- (c) On the date of the Closing, possession of the Property shall be delivered to Buyer.
- (d) Any real estate taxes (based on current bill or the prior year bill if the current year is not available), utility bills, operating or other expenses, and any assessments of the Property paid by Seller and shall be prorated as of the date of Closing.
- (e) Seller shall pay for the title commitment and title search, including exam, abstract, and attorney's fees. Seller shall also pay for the owner's policy of title insurance, all transfer fees and taxes, and

half of all escrow costs and fees. Buyer shall pay for the other half of all escrow costs and fees and any lender's title policy. The parties shall agree between them by separate letter agreement outside of escrow as to which third party contracts for services to the Property (that are not hired and paid for by tenant) shall be retained and which terminated upon closing.

- (f) Buyer's obligation to proceed to Closing shall be conditioned upon Seller's performance of all of obligations in this Agreement, provided that Buyer may in Buyer's sole discretion elect to waive failure by Seller to perform any particular obligation and proceed to Closing. In the event of the actual close of escrow, all contractual obligations shall be deemed to have been performed on both sides (save and except to the extent that certain covenants survive the close of escrow as otherwise indicated). Therefore, at close of escrow, any and all claims for alleged breach of contract (other than representations or warranties that are specified to survive Closing) shall be deemed to have been waived.
- (g) Buyer and Seller agree to cooperate in executing all other necessary or reasonably requested documents in connection with closing, including the execution of forms and meeting the requirements relating to all Internal Revenue Code requirements and reports.

Section 9.

Other Terms Until Closing

- (a) Between the date of execution of this Agreement and the Closing, Seller shall keep and perform all of the obligations to be performed under applicable laws and shall not, without first obtaining the written consent of Buyer, enter into any contracts or agreements pertaining to the Property.
- (b) Buyer shall have the right to market Buyer's proposed project to prospective users and tenants through online marketing, signage, word of mouth, or other common practices while this Agreement is in place.
- (c) **Seller will not consider, negotiate, or enter into any agreement(s), binding or otherwise, to sell the Property to any person or entity other than the Buyer while this Agreement is in place.**

Section 10.

Liquidated Damages

IF BUYER BREACHES ANY OBLIGATIONS UNDER THIS AGREEMENT AND FAILS TO CURE THE BREACH WITHIN FIVE (5) DAYS AFTER RECEIPT OF WRITTEN NOTICE (A DEMAND NOTICE) FROM SELLER IDENTIFYING THE BREACH, REQUESTING A CURE AND SPECIFICALLY STATING SELLER'S INTENTION TO EXERCISE SELLER'S RIGHT TO TERMINATE THIS AGREEMENT AND RECEIVE LIQUIDATED DAMAGES UNDER THIS SECTION, IF THE BREACH IS NOT TIMELY CURED, (AND PROVIDED SELLER IS NOT ALSO THEN IN DEFAULT UNDER THIS AGREEMENT SO AS TO PERMIT BUYER TO TERMINATE THIS AGREEMENT AND RECOVER THE DEPOSIT), SELLER SHALL BE ENTITLED, AS THE SOLE AND EXCLUSIVE REMEDY FOR THE BREACH, TO RECEIVE THE DEPOSIT (INCLUDING ANY INCREASE IN THE DEPOSIT AND ANY INTEREST ACCRUED ON THE DEPOSIT) AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE BY INITIALING THIS SECTION THAT SELLER'S DAMAGES IN THE EVENT OF SUCH A BREACH AND FAILURE TO CLOSE WILL BE UNCERTAIN AND EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN, ESPECIALLY IN VIEW OF SELLER'S WITHDRAWAL OF THE PROPERTY FROM THE MARKET, CHANGES IN THE OPERATION OF THE PROPERTY DURING THAT PERIOD AND THE LOSS OF PROSPECTIVE BUYERS. THE PARTIES HAVE NEGOTIATED THE AMOUNT OF LIQUIDATED DAMAGES, AND IT REPRESENTS A REASONABLE ESTIMATE OF SELLER'S DAMAGES CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF EXECUTION OF THIS AGREEMENT.

[Initials of Buyer and Seller]

Section 11.

Seller Representations and Guarantee

Seller represents and warrants that Seller has no knowledge that the Property has material defects; no knowledge of any material violation by the Property of laws, regulation or statutes relating to the Property; no knowledge of the release or discharge of toxic or hazardous substances or the existence of such substances on or in or under the Property; and no knowledge of any pending lawsuits or claims concerning the Property. The parties acknowledge that Seller's express warranties contained in this section shall survive Closing, but then shall be of limited duration and no claim or cause of action may be brought upon any of these representations or warranties more than twelve months after Closing.

Section 12.

Buyer Representations

Buyer represents and warrants that it is an experienced real property owner and investor with management and ownership interests in several commercial properties and that it has the financial ability to close this purchase transaction.

Section 13.

Brokers

Buyer hereby discloses that Casey Weiss and Maria Peterson (principals in Buyer entity) hold real estate licenses in the state of WI and MN. Buyer is represented by ACRE Properties LLC ("Buyer's Broker").

Section 14.

Tax-Deferred Exchange

Upon the request of either party (the "Requesting Party") to this Agreement, the other party (the "Non-Requesting Party") agrees to reasonably cooperate with the Requesting Party in consummating the sale of the Property as part of a simultaneous or non-simultaneous tax-deferred exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, *provided* that (i) the Non-Requesting Party shall not be required to take title to any property other than the Property, and (ii) the Closing Date shall not be delayed or extended thereby. The Requesting Party shall have the right to assign its rights and obligations hereunder to an accommodation entity (the "Intermediary"), who will cause the Closing to occur on the Requesting Party's behalf. All of the Requesting Party's liabilities, representations and warranties under this Agreement shall remain those of the Requesting Party and the Non-Requesting Party shall not seek recourse against the Intermediary with respect to such liabilities or for the breach of any such representations or warranties. Performance by an Intermediary in effectuating an exchange will be treated as if such performance were made by the Requesting Party, and the Requesting Party shall remain the primary obligor for the full and timely performance of all obligations of the Requesting Party under this Agreement. In the event of any breach of such representations, warranties, covenants, or other obligations, the Non-Requesting Party shall proceed directly against the Requesting Party. The Non-Requesting Party shall not be required to assume any liabilities as a result of the exchange transaction that are in addition to those which would exist if the transaction were effectuated as a sale by the Requesting Party and not effectuated as an exchange. The Requesting Party hereby agrees to indemnify, defend (with counsel reasonably satisfactory to the Non-Requesting Party) and hold harmless the Non-Requesting Party from and against any and all claims, loss, cost, damage, or expense (including, without limitation, reasonable attorneys' fees) incurred by the Non-Requesting Party and arising out of or relating to the Non-Requesting Party's participation in the Exchange.

Section 15.

Attorney Fees

If any action is brought by either party against the other party, the party in whose favor final judgment shall be entered (or the party who obtains substantially the relief it seeks even if the matter does not proceed to judgment) shall be entitled to recover court costs incurred and reasonable attorney fees.

Section 16.

Assignment; Successors and Assigns

This Agreement may be assigned by Buyer to an entity controlled by Buyer and/or to one or more third parties without the consent of Seller so long as such assignment is made in good faith as part of the process of closing this transaction. Any of the affiliates of the Buyer may participate with Buyer in taking title to the Property at Closing. Buyer shall still be fully and unconditionally liable to perform the obligations of Buyer even if an assignment is made or any partner joins Buyer on title. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties.

Section 17.

Notices

All notices to be given under this Agreement shall be in writing and sent both to the parties and their respective brokers by either (a) a nationally recognized overnight courier with letter tracking capability such as Federal Express or UPS, in which case notice shall be deemed delivered as shown in the records of the courier, or (b) fax or email if the sender also sends a copy by fax or email to the party's broker. Contact information for notice purposes will be as follows:

To Seller At: City of La Crosse
 Attn: Andrea Trane
 400 La Crosse Street
 La Crosse, WI 54601
 608-789-7512
 tranea@cityoflacrosse.org

To Buyer At: Casey Weiss
 ACRE Properties LLC
 PO Box 483
 La Crosse, WI 54602
 608-304-5700
 casey@accesscre.com

These addresses may be changed by written notice to the other party, provided that no notice of a change of address shall be effective until actual receipt of that notice.

Section 18.

Entire Agreement, Amendment

This Agreement can be amended only with another written document that is signed by the party against whom enforcement is sought. This Agreement supersedes any agreements between the parties regarding the Property which are prior or contemporaneous in time to this Agreement.

Section 19.

Time of the Essence/ Deadline to Accept

Time is of the essence in regard to performance and all deadlines contained in this Agreement. If Seller fails to deliver written acceptance to Buyer of this contract by February 12th, 2021, this offer shall be deemed automatically withdrawn and revoked.

Section 20.

Survival

The obligations, representations, and warranties, and the remedies for breach of obligations, representations, and warranties, in this Agreement shall survive the Closing.

Section 21.
Counterparts and Fax Execution

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument. This Agreement shall be binding upon the parties if fax or email signatures are exchanged by Buyer and Seller.

Section 22.
Severability

If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

Section 23.
Waivers

No waiver or any breach of covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

Section 24.
Construction

Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of nor should they be used to interpret this Agreement. The singular form shall include plural, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference. This Agreement shall be construed in accordance with the laws of the state in which the property is located without regard to conflicts of laws principles.

By Seller:
CITY OF LA CROSSE

Printed: _____ Date _____
Title:

By Buyer:
WEISS COMMERCIAL REAL ESTATE, LLC

Printed: Casey Weiss Date _____
Title: Managing Member