



5600 W. Grande Market Drive, Suite 100, Appleton, WI 54913
Phone: 920-731-3800 Fax: 920-731-3817

May 13, 2016

City of Appleton
Community & Economic Development
Attn: Matt Rehbein
100 N. Appleton Street
Appleton, WI 54911

Re: LETTER OF INTENT for the Purchase and Sale of Real Property Known as "7.3 Acres of the southern half of Lot 20 of Southpoint Commerce Park, Appleton, Wisconsin" (the "Property")

Dear Mr. Rehbein:

Subject to the final negotiation of a definitive purchase agreement (the "Purchase and Sale Agreement"), which definitive Purchase and Sale Agreement will include the terms and conditions contained in this letter and such other terms and conditions as we may agree upon and as would be typical for a similar transaction, Fortune 1000 Company (the "Purchaser"), is willing to purchase the Property, described as 7.3 acres of the southern half of Lot 20 of the Southpoint Commerce Park, from you (the "Seller"). As used herein the word "Property" includes the land, the improvements, easements, agreements, air rights, licenses and other rights and privileges appurtenant to the land, all personal property used in operating the building and improvements, all transferable permits, all contractors, suppliers and manufacturers warranties and guaranties, all surveys and plans and specifications, all third party reports and studies, all fixtures, machinery, equipment and plumbing and electrical systems and Seller's right, title and interest as landlord in all leases.

The terms to be included in the Purchase and Sale Agreement include the following:

1. **Purchase Price.** We are prepared to pay a not-to-exceed price of \$292,000 to buy the Property. The Purchase Price includes commissions to be paid by Seller. The Purchase Price would be paid as follows:

a. Earnest Money Deposit: Twenty Thousand Dollars (\$20,000) payable after the Agreement is signed into escrow with Seller's attorney ("Escrow Agent"). The Earnest Money Deposit shall be refundable in the event that Purchaser terminates the Agreement during the inspection and financing period. The Earnest Money Deposit shall be delivered upon approval of Purchaser's Board of Directors and draft of the Purchase and Sale Agreement.

b. Balance of Purchase Price to be paid by cash or wire transfer at the time of Closing.

2. **Site Development.** Seller shall be responsible for costs associated with the development of the Property including installation of adequate offsite storm water piping and/or storm water management basin and extension of utilities up to the property line. This offer is

contingent upon the community development retention pond being adequate based on the final site design.

3. **Target Closing Date/Possession.**

Closing shall take place on or before ten (10) days after:

- i. Obtaining all Design Review Approvals;
- ii. The completion of the inspection period; and
- iii. A satisfactory due diligence review, which includes approval of Purchaser's Board of Directors.

4. **Inspection Period.** Purchaser shall have a 90-day inspection period to complete all environmental, geotechnical, zoning approval, flood plain, title, and engineering reviews from the time of Purchase and Sale Agreement execution. Purchaser shall investigate during the inspection period any encroachments which may exist due to surrounding property boundaries. Seller will supply to Purchaser all geotechnical logs, environmental reports, wetlands and engineering reports, and title reports in its possession. Purchaser requires the right to extend the approvals period by up to one additional 30-day inspection period if it is unable to complete all due diligence required within the first 90-day inspection period mentioned above.

5. **Title.** At closing marketable and insurable title to the Property shall be conveyed to Purchaser or Purchaser's designee by general warranty deed in fee simple absolute free, clear and unencumbered, subject only to easements of record, the leases to be approved by Purchaser during the Inspection Period and installments of real estate taxes a lien but not yet due and payable. In addition to the deed Seller shall be required to deliver to Purchaser such other instruments and documents as are typical for similar transactions.

6. **Closing Costs.** Seller shall pay the all state and local conveyance fees. Purchaser shall be responsible for recording costs for the deed and other documents that Purchaser requires be recorded.

7. **Real Estate Taxes and Assessments.**

- a. Purchaser will assume and agree to pay:
 - i. All general and special governmental and utility assessments (the "Assessments") becoming a lien against the Property after the Closing; and
 - ii. So much of the real estate taxes assessed for and first becoming a lien against the Property during the calendar year in which Closing occurs (the "Current Year Taxes") as shall be allocable to Purchaser for proration (based upon the number of days remaining in such calendar year after the Closing).
- b. Seller will pay:

i. All Assessments becoming a lien against the Property on or before the Closing;

ii. All delinquent real estate taxes;

iii. Both installments of real estate taxes payable during the calendar year in which Closing occurs;

iv. So much of the Current Year Taxes as shall be allocable to Seller by proration (based upon the number of days in such calendar year prior to and including the Closing). The most current available tax installments shall be used for the purposes of such proration's if the applicable taxes have not been set.

c. Any real estate taxes or Assessments which are not assumed by Purchaser and which are not due and payable, and have not been paid, at the time of Closing shall be allowed to Purchaser as a credit against the Purchase Price at Closing.

8. **Risk of Loss.** Risk of loss to the Property from casualty or by reason of condemnation shall be borne by Seller until Closing.

9. **Condition of Property.** Seller will make typical representations and warranties to Purchaser in the Agreement and at the Closing that there are no claims against Seller and that the Property is in good condition and repair, is free from title claims and liens, that there are no adverse environmental conditions, and that the improvements comply with applicable laws.

10. **Failure to Close.**

a. The Agreement shall provide that if Seller is ready, willing and able to close this transaction and Purchaser is obligated to do so, but fails to close, Seller shall retain the Earnest Money then paid by Seller as liquidated damage for such failure to close and Purchaser shall be relieved of all other liability to Seller of any nature whatsoever.

b. If Purchaser is ready, willing and able to close this transaction and Seller is obligated to do so, but fails to close, then Purchaser, at its option,

i. May elect to enforce the terms hereof by action for specific performance, or

ii. May terminate the Agreement by notice to Seller and receive a full refund of the Earnest Money.

c. Upon termination under the preceding sections 100.a or,10.b the parties shall have no further rights and obligations hereunder other than those

rights and/or obligations which are expressly stated to survive expiration or termination of the Agreement.

11. **Fixtures.** All fixtures and personal property of Seller that is on the Real Property shall become the property of the Purchaser unless Purchaser requests Seller to remove specific items.

12. **Exclusivity.** Commencing upon the date of Seller's acceptance of this Letter of Intent and continuing for a period of sixty (60) days thereafter, Seller agrees not to market the Property or any portion thereof for sale or lease or enter into any agreement for the sale or lease of the Property or any portion thereof to any other person or entity.

13. **Commissions.** Seller shall be responsible for a commission associated with this transaction equal to 8% of \$292,000.00 payable to Esler Commercial, LTD. at closing.

14. **Purchase & Sale Agreement.** Purchaser's standard Purchase & Sale Agreement to be used.

15. **Confidentiality.** Seller and Purchaser agree not to disclose or discuss with any third party (including real estate brokers and employees, agents and subcontractors of Seller located on or providing services to the Property) the terms of this Letter of Intent or the Purchase and Sale Agreement or provide copies of this Letter of Intent, the Purchase and Sale Agreement or any closing statement for the transaction to any third party, except that disclosure is permitted when and to the extent that disclosure is:

- a. Required by or contemplated by the terms of this Letter of Intent;
- b. Required by any statute, ordinance, rule or regulation or any court order (such as disclosure to the Internal Revenue Service); or
- c. Required in the ordinary course of business and the recipient has been advised of this confidentiality obligations (such as disclosure to an attorney, accountant or lending institution) and agrees to observe and comply with the provisions of this paragraph.

This Letter of Intent shall not create a binding agreement and shall not be construed as a contract for purchase and sale of the Property. It is, however, an expression of certain terms and conditions to be included in the Purchase and Sale Agreement. Upon receipt of a signed copy of this Letter of Intent, Purchaser shall instruct its legal counsel to prepare the Purchase and Sale Agreement incorporating the terms and provisions of this Letter of Intent for Seller's review. Seller and Purchaser shall work diligently and in good faith to enter into the Purchase and Sale Agreement within forty-five (45) days after the acceptance of this letter of intent by Seller. If Purchaser and Seller do not enter into the Purchase and Sale Agreement within thirty (45) days after the acceptance of this letter of intent by Seller, then, except for both parties' obligations of confidentiality under paragraph 13, the parties will be released from their obligations under this Letter of Intent.

If the terms of this Letter of Intent are acceptable, please sign and return it to Andy Esler (Esler Commercial, LTD.) or Kristin Dragon (CBRE, Inc.) by May 20, 2016.

Sincerely,

Esler Commercial, LTD.

Andrew Esler
Vice President

cc: Kristin Dragon, CBRE

AGREED TO BY PURCHASER:

By: _____

Name: _____

Title: _____

Dated: _____, 2016

AGREED TO BY SELLER:

By: _____

Name: _____

Title: _____

Dated: _____, 2016