



June 25, 2019

Council Meeting of July 2, 2019

Subject: Buy-Sell Agreement – Airport Business Park Phase II, Lot 31 and Portion of 735 Ellis Road

The Honorable Mayor and Members of the City Council

Ladies and Gentlemen:

The City has received a buy-sell agreement with a Muskegon County manufacturer for Lot 31 in the Airport Business Park Phase II located at 770 Airport Place and a portion of property at 735 Ellis Road. The purchase offer is for \$21,445 per acre for a total price of \$95,000. This price is consistent, or above, the per acre selling price of previously sold sites within this industrial park. Because Norton Shores and Muskegon County co-own the property, the County must also approve the sale and their staff has indicated that the price is acceptable.

The offer was made by Earthtronics of Muskegon, Michigan. The company manufactures and supplies LED lighting products. They plan to build a 30,000 square foot facility. The company currently employs 14 people of which 11 are in Michigan and 3 are out of state. Earthtronics anticipates doubling its sales within the next five years and employing as many as 25 in Michigan and 5 out of state.

I recommend that City Council approve the buy-sell agreement. A resolution authorizing the Mayor and City Clerk to execute the buy-sell agreement is attached for City Council's consideration.

Respectfully Submitted,

Mark C. Meyers City Administrator

/ss Attachments

Administration/City Clerk (231) 798-4391	Assessing Division (231) 799-6806	Building Division (231) 799-6801	Finance/Treasurer (231) 799-6805	Fire Prevention (231) 799-6809	Fire Department (231) 798-2255
Parks/Recreation (231) 799-6802	Planning/Zoning (231) 799-6800	Police Department (231) 733-2691	Public Works (231) 799-6803	Streets Division (231) 798-2156	Water/Sewer (231) 799-6804

## RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Norton Shores City Council authorizes the Mayor and City Clerk to execute a buy-sell agreement for Lot 31 in the Airport Business Park Phase II located at 770 Airport Place and a portion of 735 Ellis Road in the amount of \$21,444.70 per acre for a total selling price of \$95,000.

At a regular meeting of the City Council of the City of Norton Shores, held at the Norton Shores Branch Library Community Room, 705 Seminole Road, on the 2<sup>nd</sup> day of July 2019, the foregoing resolution was moved for adoption by Council Member . The motion was supported by Council Member .

Ayes:

Nays:

Absent:

Resolution declared adopted/denied.

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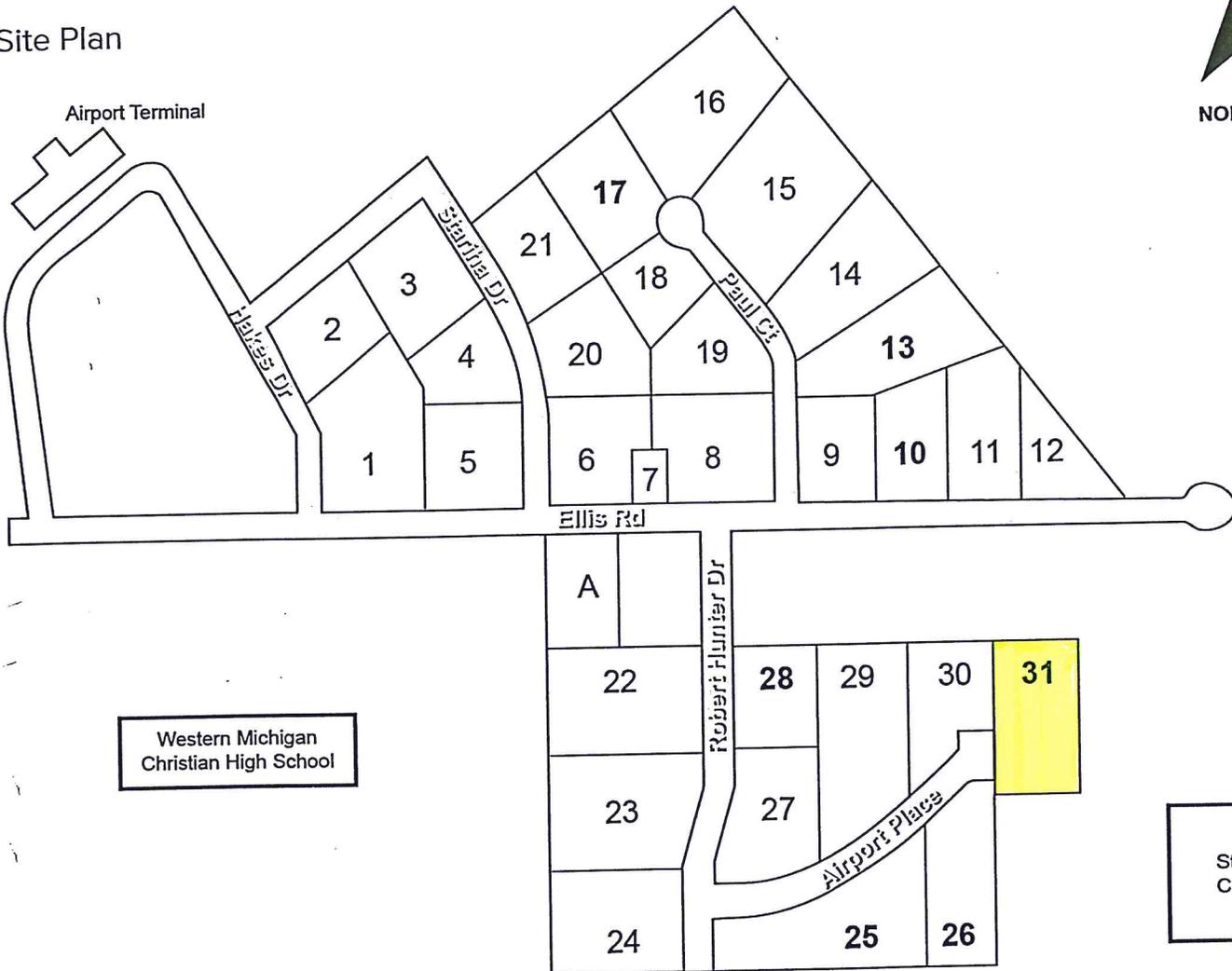
Shelly Stibitz, City Clerk

# Muskegon Co, Airport Business Park – Norton Shores, Michigan

## Land For Sale

1.90 – 3.30  
Acres  
AVAILABLE

### Site Plan



### AVAILABLE LOTS

LOT #	ACRES	PRICE
10	1.9	\$56,700
13	3.3	\$99,000
17	2.3	\$69,000
25	2.1	\$63,300
26	2.5	\$74,100
28	2.0	\$60,000
31	2.7	\$81,000





BUY AND SELL AGREEMENT FOR VACANT LAND

Office of Capstone Real Estate, LLC, Broker,

Grand Haven (city), Michigan Phone: 616-847-1031 Fax:

Email: Dave@CapstoneCompanies.net Offer Date: 6-12-2019 (time)

1. Agency Disclosure. The undersigned Buyer and Seller each acknowledge the Broker named above is acting as (choose one):
Subagent of the Seller Agent of the Buyer Dual Agent (with written, informed consent of both Buyer and Seller) Other (specify):

2. Buyer's Offer. The undersigned Buyer hereby offers and agrees to purchase property located in the City of Norton Shore, County, Michigan, commonly known as Lot 31 of Musk Airport Indl Park + part of 735 Ellis

Permanent Parcel Number 27-648-000-0031-00 and part of 61-27-120-200-0004-00 and legally described as follows: Legal descriptions and PP#s to be confirmed by survey and title work

(the "Land"), together with all fixtures and improvements situated on the Land (the "Improvements"), all of which is collectively referred to herein as the "Premises", except the following:

NOTE - "Premises" shall be Lot 31 and the portion of the property commonly known as 735 Ellis shaded on Exhibit 1.

3. Purchase Price. The purchase price for the Property is: Ninety-Five Thousand and No/100 Dollars (\$ 95,000.00 ).

4. Payment of Purchase Price and Financing. Complete subparagraph "A" and subparagraph "B". Terms of Payment. The purchase price shall be paid at the closing by Buyer to Seller as indicated by "X" below (mark one box or the other under this subparagraph "A").

- Cash. Buyer shall pay the full purchase price to Seller upon execution and delivery of warranty deed and performance by Seller of the closing obligations specified in this agreement.
Land Contract. Buyer shall pay the full purchase price to Seller pursuant to the terms and conditions stated in the Commercial Alliance of REALTORS Land Contract form, unless the parties mutually agree upon a different form of land contract, upon performance by Seller of the closing obligations specified in this Agreement.

Financing. Indicate by an "X" below which applies (mark one box or the other under this subparagraph "B").
No Financing Contingency. Buyer's obligation to purchase the Premises is not contingent upon Buyer obtaining financing for all or any portion of the purchase price.
Financing Contingency. Buyer's obligation to purchase the Premises is contingent upon Buyer obtaining financing for the purchase of the Premises that is acceptable to Buyer, in Buyer's sole and absolute discretion, within forty-five (45) calendar days of the Effective Date of this Agreement (the "Financing Contingency Period").

5. Survey. Seller shall provide Buyer with a copy of any existing survey of the Premises that Seller has in Seller's possession within five (5) days of the date of the Effective Date. In addition, (select one of the following):

- A new survey: ALTA showing all easements of record, improvements and encroachments, if any, and completed to the most current ALTA/NSPS Land Title Survey minimum requirements; or boundary survey with iron corner stakes and with all easements of record, improvements and encroachments, if any; or
A recertified survey; or
No new or recertified survey;

shall be obtained by Buyer at Buyer's expense; or provided by Seller to Buyer at Seller's expense, within thirty (30) calendar days after the title insurance commitment referenced in this Agreement has been provided by Seller to Buyer under the terms of Title Insurance paragraph contained in this Agreement. If Seller is responsible to provide a new or recertified survey under this paragraph and fails to do

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Buyer's Initials Seller's Initials

so within the required time, then Buyer may order the required survey at Seller's expense. If the new or recertified survey (or absent such the existing survey, if any) discloses any material and adverse encumbrance that is not acceptable to Buyer, then Buyer shall have the right to object and to terminate this Agreement under the terms and conditions set forth in the Title Insurance paragraph contained in this Agreement; otherwise Buyer's right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived. Other:  
Seller to provide whatever surveys it has of the parcels involved; Buyer will obtain a new survey, at Buyer's cost.

6. **Title Insurance.** At Seller's expense, Seller shall provide Buyer with a standard ALTA owner's policy of title insurance in the amount of the purchase price, effective as of the date of closing. A commitment to issue such policy insuring marketable title (as defined in this Agreement) vested in Buyer, including a tax status report, shall be ordered within seven (7) calendar days after the Effective Date, and shall be delivered, with copies of all title exception documents, as soon as feasible thereafter. (Note that some title commitments do not report on the status of oil, gas, or mineral rights.) If any matter disclosed by the title commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Premises, Buyer shall have the right to terminate this Agreement by giving Seller written notice within seven (7) calendar days after copies of both the title commitment and survey referenced in this Agreement above are delivered to Buyer, otherwise Buyer's right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived. If any matter disclosed by the title commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Premises, Buyer shall give Seller written notice of the matter within ten (10) calendar days after copies of both the title commitment (and all exception documents identified in the title commitment) and survey referenced in this Agreement are delivered to Buyer. If Seller fails to cure the matter within ten (10) calendar days of receiving written notice (the "Title Commitment Cure Period"), Buyer shall have the right to terminate this Agreement by giving Seller written notice within ten (10) calendar days after the expiration of the Title Commitment Cure Period, otherwise Buyer's right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived. Other:

7. **Inspections.** By signing this Agreement, Buyer is representing that the Buyer is aware that professional services are commercially available at a fee by experts selected by Buyer. The Buyer has elected to arrange and pay for services/investigations, including, but not limited to, the following:  
 No Inspections     Soil Borings     Zoning     Site Plan Approval     Utilities     Permitting     Other (specify):

The Buyer shall have the right to terminate this Agreement if the due diligence results are not acceptable to the Buyer by giving Seller written notice within ninety (90) calendar days after the Effective Date of this Agreement, otherwise the right to terminate shall be deemed to have been waived. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether made intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by the Seller. Accordingly, Buyer agrees to accept the Property "as is" and "with all faults" (whether obvious or concealed) except as otherwise expressly provided in the documents specified in the preceding sentence. Other:

8. **Closing Adjustments.** The following adjustments shall be made between the parties as of the close of business on the closing date, with Buyer receiving a credit or assuming responsibility, as the case may be, for amounts attributable to time periods following the closing date:  
a. Prepaid rent and Additional Rent (as defined in the paragraph);  
b. Interest on any existing indebtedness assumed by Buyer;  
c. Charges for any transferable service contracts assigned to Buyer described in Exhibit D;  
d. Utility deposits;  
e. Security deposits;  
h. Additional Rent (as defined below).

If any tenant is late, delinquent or otherwise in default in the payment of rent on the closing date, Seller shall assign to Buyer the claim for and the right to collect the rent; Buyer shall pay such past due rent to Seller promptly upon receipt; but Buyer shall not be obligated to file suit to collect such rent and shall reassign the claim to Seller on demand. If any tenants are required to pay percentage rent, charges for real estate taxes, insurance, common area maintenance expenses, or other charges of a similar nature ("Additional Rent"), and any Additional Rent is collected by Buyer after closing attributable in whole or in part to any period prior to closing, Buyer shall promptly pay to Seller Seller's proportionate share of the Additional Rent. Other:

9. **Property Taxes.** All property taxes first billed prior to the year of closing will be paid by Seller, without proration. All property taxes billed or to be billed in the year of closing will be paid as follows (choose one):  
 No Proration:  
 Buyer     Seller shall pay the taxes billed in July.  
 Buyer     Seller shall pay the taxes billed in December.  
 Calendar Year Proration. Combined per diem tax amount representing both the July bill and the December bill shall be calculated based on a 365 day year. Seller shall be responsible for the per diem total from January 1 to, but not including, the day of closing. Buyer shall be responsible for the difference between the total of the two tax bills and the Seller's share. If the amount of either tax bill is unknown on the day of closing, such amount shall be based on the prior years' tax bill.



Buyer's Initials

Seller's Initials

10. **Special Assessments**, and deferred assessments, whether due in installments or otherwise, which are due and payable on or before the closing shall be paid by the Seller. All other special assessments, including deferred assessments, for improvements, now installed, not yet installed, or in the process of being installed, that are first due and payable after the closing shall be paid by Buyer. Other:

11. **Conveyance.** Upon performance by Buyer of the closing obligations specified in this Agreement, Seller shall convey the marketable title to the Property to Buyer by warranty deed or agree to convey marketable title by land contract or assignment, as required by this Agreement, including oil, gas and other mineral rights owned by Seller, if any, subject only to existing zoning ordinances, and the following matters of record: building and use restrictions, easements, oil and gas leases, and reservations, if any. As used herein, "marketable title" means marketable title within the meaning of the Michigan 40-Year Marketable Title Act (Mich. Comp. Laws §§ 565.101 et seq.).

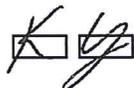
The following paragraph applies only if the Property includes unplatted land:  
Seller agrees to grant Buyer at closing the right to make (insert number) any & all division(s) under Section 108 (2), (3) and (4) of the Michigan Land Division Act. (if no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or Broker do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval, on or before closing deadline (date), of the proposed division to create the Premises. Other:

12. **Warranties of Buyer.** Except as otherwise provided or acknowledged in this Agreement, Buyer represents and warrants to Seller as follows:  
a. The performance of the obligations of Buyer under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Buyer.  
b. There is no litigation or proceeding pending, or to Buyer's knowledge threatened, against or involving Buyer, and Buyer does not know or have reason to know of any ground for any such litigation or proceeding, which could have an adverse impact on Buyer's ability to perform, or Seller's interests, under this Agreement.  
c. In entering into this Agreement, Buyer has not relied upon any written or verbal representations made by Seller or any representative of Seller, including any real estate salesperson, regarding the Property or any aspect of this transaction, which are not expressly set forth in this Agreement.  
d. Other:

13. **Warranties of Seller.** Except as otherwise provided or acknowledged in this Agreement, Seller represents and warrants to, and agrees with Buyer as follows:  
a. Seller's interest in the Property shall be transferred to Buyer on the closing date, free from liens, encumbrances and claims of others.  
b. The performance of the obligations of Seller under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Seller or the Property.  
c. There is no litigation or proceeding pending or to Seller's knowledge threatened against or involving Seller or the Property, and Seller does not know or have reason to know of any ground for any such litigation or proceeding which could have an adverse impact on Seller's ability to perform under this Agreement or that could adversely affect Buyer's title or use of the Property.  
d. Seller shall continue to operate the Property in the ordinary course of business and maintain the Property in a state of good condition and repair during the interim between the signing of this Agreement and the closing date.  
e. If a statement(s) of income and expense with respect to the operation of the Property is (are) described in Exhibit B, such statement(s) is (are) accurate for the period(s) designated in the statement(s).  
f. The information concerning written leases and tenancies not arising out of written leases described in Exhibit B is accurate as of the Effective Date, and there are no leases or tenancies with respect to the Premises other than those described in Exhibit B (the "Leases"). The warranties in this paragraph do not apply to oil and gas leases, if any. Except as otherwise described in the documents that will be delivered pursuant to the index of Exhibits:  
(1) All of the Leases are in full force and effect, no party thereto is in material default thereunder, and none of them have been modified, amended, or extended beyond what will be delivered per Exhibit B; with respect to renewal or extension options, options to purchase the Premises, advance payments in excess of one month, common area maintenance and utility fees, and security deposits, these items are set forth in the written leases described in Exhibit B.  
(2) The rents set forth are being collected on a current basis and there are no arrearages;  
(3) No real estate brokerage commission will become owing in the event of any tenant's exercise of any existing option to renew the term of any lease or purchase of the Premises.  
g. With respect to underlying land contracts or mortgages, the sale will not accelerate indebtedness, increase interest rates, or impose penalties and sanctions.  
h. Seller is without personal knowledge as to the presence on the Property of any toxic or hazardous substances or of any underground storage tanks.  
i. Other:

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Buyer's Initials

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- 14. **Damage to Business.** If between the Effective Date and the closing date, all or any part of the Property is damaged by fire or natural elements or other causes beyond Seller's control that cannot be repaired prior to the closing date, or any part of the Property is taken pursuant to any power of eminent domain, Seller shall immediately notify Buyer or such occurrence, and either Seller or Buyer may terminate this Agreement by written notice to the other within fifteen (15) days after the date of damage or taking. If neither elects to terminate this Agreement, there shall be no reduction in the purchase price and, at closing, Seller shall assign to Buyer whatever rights Seller may be with respect to any insurance proceeds or eminent domain award.
- 15. **Closing.** The closing shall be held on or before 105 days from Eff Date (date) and as promptly as practical after all necessary documents have been prepared. An additional period of thirty (30) days shall be allowed for closing to accommodate delays in title work or the correction of title defects and/or survey problems which can be readily correctable, delays in obtaining any required inspections, surveys or repairs, delays in completing Environmental Site Assessments, Baseline Environmental Assessment or Due Care Plan/Section 7a Compliance Analysis (if such assessments or plans were ordered in a timely manner), or if the terms of purchase require participation of a lender and the lender has issued a commitment consistent with the requirement but is unable to participate in the closing on or before the required date.
- 16. **Possession.** Seller shall tender to Buyer possession of the Property upon completion of the closing, subject to all existing leases and rights of tenants in possession. Other:

Possession shall transfer free of any leases and possessory rights of others.

- 17. **Seller's Closing Obligations.** At closing, Seller shall deliver the following to Buyer:
  - a. The warranty deed, land contract or assignment of land contract required by this Agreement.
  - b. A bill of sale for any Personal Property (described in Exhibit "D").
  - c. A written assignment by Seller of Seller's interest in all leases and a transfer to Buyer of all security deposits, accompanied by the original or a true copy of each lease.
  - d. An assignment of all Seller's rights under any Service Contracts described in Exhibit C which are assignable by their terms and which Buyer wishes to assume, together with an original or true copy of each Service Contract assigned.
  - e. A notice to any tenants advising the tenants of the sale and directing that future payments be made to Buyer.
  - f. An accounting of operating expenses including, but not limited to, CAM, taxes, insurance and Additional Rent, collected in advance or arrears, spent or not yet spent by Seller, showing an accurate allocation between the parties pursuant to the leases.
  - g. Payment of the County and State real estate transfer tax.
  - h. Any other documents required by this Agreement to be delivered by Seller.
- 18. **Buyer's Closing Obligations.** At closing, Buyer shall deliver to Seller the following:
  - a. The cash portion of the purchase price specified in this Agreement shall be paid by cashier's check or other immediately available funds, as adjusted by the apportionments and assignments in accordance to this Agreement.
  - b. A written assumption by Buyer of the obligations of Seller under the leases arising after closing, including an acknowledgement of the receipt of all security deposits.
  - c. Any other documents required by this Agreement to be delivered by Buyer.
- 19. **1031 Tax Deferred Exchange.** Upon either party's request, the other party shall cooperate and reasonably assist the requesting party in structuring the purchase and sale contemplated by this Agreement as part of a tax deferred, like-kind exchange under Section 1031 of the Internal Revenue code of 1986, as amended; provided, however, that in connection therewith, the non-requesting party shall not be required to (a) incur any additional costs or expenses; (b) take legal title to additional real property (i.e. the requesting party's "replacement property" or "relinquished property"); or (c) agree to delay the closing.
- 20. **Notices.** Any notice required or permitted to be given hereunder shall be deemed to have been properly given, if in writing and delivered to the parties at the addresses shown below, and shall be deemed received (a) upon delivery, if delivered in person or by facsimile transmission, with receipt thereof confirmed by printed facsimile acknowledgement, (b) one (1) business day after having been deposited for next day overnight delivery with a nationally recognized overnight courier service, (c) two (2) business days after having been deposited in any U.S. post office or mail depository and sent by certified mail, postage paid, return receipt requested, or (d) upon sending, if sent by email (with a confirmation copy sent the same day by overnight delivery).
- 21. **Authority of the Parties.** Each of the undersigned individuals who have signed this Agreement on behalf of Seller and Buyer entities represent and warrant that he/she is authorized to sign this Agreement on behalf of such party and to bind such party to the requirements of this Agreement.
- 22. **Additional Acts.** Buyer and Seller agree to execute and deliver such additional documents and to perform such additional acts after the closing as may become necessary to effectuate the transfers contemplated by this Agreement.
- 23. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the sale of the Property. All contemporaneous or prior negotiations have been merged into this Agreement. This Agreement may be modified or amended only by written instrument signed by the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
- 24. **Earnest Money.** Buyer gives Capstone Real Estate, Broker, three (3) days to obtain the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding agreement between Buyer and Seller. Buyer shall deposit \$ 10,000.00 with Transnation Title Agency, Escrow Agent, [insert name of Broker, Title Company or other]  with this offer or  within 2 business ( ) days after acceptance of this offer, evidencing Buyer's good faith, to be held by the Escrow Agent and to apply to the purchase price or the down payment portion thereof where applicable. If this offer is not accepted, or the title is not marketable, or if the purchase is contingent upon conditions specified that cannot be met, this deposit shall be promptly refunded. If the Buyer defaults, all deposits made may be forfeited as liquidated damages at Seller's election, or alternatively, Seller may retain the deposits as part payment of the purchase price and pursue Seller's legal or equitable remedies against Buyer. If the sale is not closed according to its terms, the selling Broker may notify Buyer(s) and Seller(s) of Escrow Agent's intended disposition of earnest deposit, and all parties shall be deemed to have agreed to the disposition of the earnest money deposit unless Escrow Agent is notified of a court action pending concerning this sale or disposition of earnest money within thirty (30) days after notice to the parties.

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 Buyer's Initials        Seller's Initials

- 25. **Disclosure of Price and Terms.** The purchase price and the terms of this sale may be disclosed by the Commercial Alliance of REALTORS® Multiple Listing Service (CARWM) in the ordinary conduct of its business. Deletion of this paragraph shall not be considered a counter offer that would require a counter acceptance.
- 26. **Credit Reports.** Buyer consents that, if not otherwise prohibited, the Broker(s) may give Seller information about the Buyer contained in a credit report that may be furnished to the Broker(s) by a credit reporting agency.
- 27. **Advice of Counsel.** Buyer acknowledges that the Broker has recommended that the parties retain an attorney or attorneys to review the terms of this Agreement.
- 28. **Attorneys' Fees.** In the event of litigation arising from the failure or alleged failure of either party to perform its obligations under this Agreement, the party prevailing in that litigation (including appeals of all levels) shall be entitled to collect its court costs and reasonable attorneys' fees incurred in connection with such litigation from the other party. The provisions of this Section shall survive Closing or termination of this Agreement.

29. **Environmental.**

A. **Notice to buyers and sellers (environmental risks).**

Whenever real property is acquired or occupied, the buyer incurs some degree of risk with regard to potential environmental contamination and/or protected natural resources on the property. Various federal, state, and local laws may impose liability upon the buyer for the remediation of the contamination even though the buyer did not cause it, or may restrict the buyer's ability to fully develop or utilize the property. Such risk can be minimized through the performance of environmental due diligence. Additionally, sellers are advised that they may have an obligation to provide certain environmental information and/or disclosures to prospective buyers. The failure to provide such information or disclosures may subject a seller to potential liability or result in the loss of certain liability protections.

No real estate brokers/salespersons in this transaction possess the expertise necessary to assess the nature or extent of these environmental risks or to determine the presence of environmental contamination or protected natural resources. The real estate brokers/salespersons involved in this transaction do not make independent investigations as to environmental contamination or protected natural resources with respect to any property, and they make no representations regarding the presence or absence, now or in the past, of environmental contamination. It is therefore prudent for each party to this transaction to seek legal and technical counsel from professionals experienced in environmental matters to provide an evaluation of the environmental risks associated with the transaction.

B. **Environmental reports and assessments.**

- (1) Within seven ( 7 ) calendar days of the Effective Date, Seller shall deliver to Buyer copies of any existing reports, data, plans, permits, notices and/or information in Seller's possession relating to environmental matters pertaining to the Premises ("Seller's Environmental Documents").
- (2) Buyer shall have a period of forty-five ( 45 ) calendar days after the Effective Date to evaluate environmental matters relating to the Premises ("Environmental Due Diligence Period"). Buyer and Buyer's agents shall have the right to enter upon the Premises during the Environmental Due Diligence Period during reasonable business hours for the purpose of conducting, at Buyer's expense, any environmental assessments of the Premises that Buyer deems appropriate, which assessments may include, but shall not be limited to, a Phase I Environmental Site Assessment, Transaction Screen, and/or evaluation of other regulated conditions or matters such as wetlands, asbestos containing materials, mold, or lead based paint ("Environmental Assessments"). The Environmental Assessments may not include the collection or analysis of samples of soil, groundwater, soil gas, indoor air, surface water, building components or any other environmental medium unless Buyer obtains prior written consent from Seller, which consent shall not be unreasonably withheld, delayed or conditioned. Buyer agrees that the Environmental Assessments shall not unreasonably interfere with the rights of Seller or any tenants in possession and Seller agrees to reasonably cooperate and to request that its tenants reasonably cooperate with the Environmental Assessments.
- (3) Buyer shall have the right to terminate this Agreement if Seller's Environmental Documents or the Environmental Assessments are not acceptable to Buyer by delivering written notice to Seller prior to the expiration of the Environmental Due Diligence Period. If Buyer determines that any additional environmental due diligence activities (including, but not limited to, any additional environmental investigations, reports, approvals or permits) are warranted, then Buyer may provide Seller with a proposed amendment to this Agreement to extend the Environmental Due Diligence Period to allow Buyer to conduct such activities. If Buyer does not deliver a termination notice or proposed amendment to Seller prior to the expiration of the Environmental Due Diligence Period, then Buyer shall be deemed to have waived any objections to environmental matters relating to the Premises. If Buyer provides Seller with a proposed amendment to this Agreement, then Seller shall have a period of seven ( 7 ) calendar days to execute or negotiate mutually acceptable terms for such amendment, otherwise Buyer may, but shall not be obligated to, terminate this Agreement by delivering written notice to Seller with two (2) calendar days after Seller's deadline for executing or negotiating an amendment to this Agreement.
- (4) If the Environmental Assessments cause any damage to the Premises, Buyer agrees to reasonably restore the Premises to the condition that existed prior to such damage. The restoration obligation does not require the remediation of any existing environmental condition. Buyer shall indemnify, defend and hold Seller and Broker harmless from and against any damage to persons or property caused by Buyer or Buyer's agents in conducting the Environmental Assessments.

C. **Nondisclosure.**

- (1) If Seller's Environmental Documents or the Environmental Assessments identify the Land as a "facility" as defined in Part 201 of Michigan's Natural Resources and Environmental Protection Act, Public Act 451 of 1994, as amended ("NREPA") or a "site" as defined in Part 213 of NREPA, then Buyer may conduct a Baseline Environmental Assessment ("BEA") and/or a Due Care Plan ("DCP"); provided, however, that Buyer may not submit or otherwise disclose such BEA, DCP, or similar report (e.g., a response activity plan) to the Michigan Department of Environmental Quality prior to closing unless Buyer obtains prior written consent from Seller.
- (2) If Buyer exercises its right to terminate this Agreement pursuant to subparagraph b(3) above, Buyer shall not disclose Seller's Environmental Documents or the Environmental Assessments to any third party unless required by mandatory disclosure pursuant to legal process. At Seller's request, Buyer shall provide copies of any Environmental Assessments to Seller.

D. **Other:**



Buyer's Initials

Seller's Initials

30. **Brokerage Fee.** Seller and/or Buyer agree(s) to pay the broker(s) involved in this transaction a brokerage fee as specified in any agency agreement or other written agreement between them. In the event no such agreement exists,  Buyer  Seller agrees to pay a brokerage fee of as offered on CAR MLS. This brokerage fee shall be paid in full promptly after it is earned, but not later than closing. Unless otherwise previously agreed, Buyer and/or Seller agree(s) that the brokerage fee may be shared by the recipient with any cooperating broker who participates in the sale, in such amount as the recipient decides, without further disclosure to or consent from Buyer and/or Seller. Seller and Buyer agree that the broker(s) involved in this transaction is/are an intended third party beneficiary entitled to enforce the obligation set forth herein to pay the brokerage fee. Other:

31. **Other Provisions:**  
Buyer's obligation to close the transaction contemplated hereby is expressly contingent upon the following being met, to Buyer's reasonable satisfaction, within 90 days after the Effective Date:

- A. Buyer's ability to secure a 12-year property tax abatement from City of Norton Shores;
- B. Buyer's ability to have an approximately 30,000 sf building and sufficient ancillary improvements (parking, storm water retention, etc.) for same designed and laid out on the Premises (the "Design Plan"); and
- C. Any approvals necessary for the division of 735 Ellis and the combination of the eastern portion of 735 Ellis (shaded on Exhibit 1) with Lot 31 in order to create the "Premises".
- D. Municipal approval of the the Design Plan and Buyer's intended use.

32. **Effective Date.** For purposes of this Agreement, the phrase, "Effective Date of this Agreement" ("Effective Date") shall be the date upon which this Agreement is fully executed.

33. **Index of Exhibits.**

Not Applicable	Attached	Seller to Furnish within Calendar days from Effective Date	Exhibit #	Subject
X			A	Disclosure Regarding Real Estate Agency Relationships
X			B	Income and Expense with respect to the operation of the Premises
X			C	Written leases and any tenancies not arising out of written leases
X			D	Service Contracts
			F	Addendum
	X		1	Depiction of the Premises

33. By signing below, Buyer acknowledges having read this Agreement and authorizes delivery of this Agreement to Seller.

Buyer: \_\_\_\_\_  
(print name of individual or entity)

Signature: \_\_\_\_\_

Its: \_\_\_\_\_  
(if Buyer is an entity)

Buyer's Address: \_\_\_\_\_

Buyer: EARTHTRONICS, INC.  
(print name of individual or entity)

Signature: [Signature]

Its: Executive Vice President  
(if Buyer is an entity)

Bus. Phone: 231-332-1183 Fax: \_\_\_\_\_

Email: Kevin@earthtronics-com

33. SELLER'S ACCEPTANCE

Date: \_\_\_\_\_ Time: \_\_\_\_\_

The above offer is hereby accepted   as written  modified as follows:

\_\_\_\_\_  
\_\_\_\_\_

By signing below, Seller acknowledges having read and authorizes delivery of this Agreement to Buyer. If this Agreement is signed by Seller without any modifications, the date Seller signs becomes the Effective Date. If this Agreement is signed by Seller subject to any modifications, Seller gives Broker above named until \_\_\_\_\_ (time) \_\_\_\_\_ (date) to obtain Buyer's written acceptance of Seller's counter offer.

Seller: \_\_\_\_\_  
(print name of individual or entity)

Seller: \_\_\_\_\_  
(print name of individual or entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Its: \_\_\_\_\_  
(if Seller is an entity)

Its: \_\_\_\_\_  
(if Seller is an entity)

Seller's Address: \_\_\_\_\_

Bus. Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

34. BUYER'S RECEIPT OF ACCEPTANCE

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Buyer acknowledges receipt of Seller's acceptance of Buyer's offer. If Seller's acceptance of Buyer's offer was subject to a counter offer, Buyer agrees to accept the terms of the counter offer:

as written (with all other terms and conditions of Buyer's offer remaining unchanged); or   modified as follows:

\_\_\_\_\_  
\_\_\_\_\_

If Buyer is accepting a counter offer from Seller as written, the date Buyer signs below becomes the Effective Date. If Buyer is accepting Seller's counter offer subject to any modifications, Buyer gives Broker above named until \_\_\_\_\_ (time) \_\_\_\_\_ (date) to obtain Seller's written acceptance of Buyer's counter offer.

Buyer: \_\_\_\_\_  
(print name of individual or entity)

Buyer: \_\_\_\_\_  
(print name of individual or entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Its: \_\_\_\_\_  
(if Buyer is an entity)

Its: \_\_\_\_\_  
(if Buyer is an entity)

35. SELLER'S RECEIPT OF ACCEPTANCE

Date: \_\_\_\_\_, Time: \_\_\_\_\_

Seller acknowledges receipt of a copy of Buyer's acceptance of Seller's counter offer (if Seller made a counter offer), or Seller agrees to accept the terms of Buyer's counter offer as written. If Seller is accepting the terms of Buyer's counter offer as written, then the date Seller signs below becomes the Effective Date.

Seller: \_\_\_\_\_  
(print name of individual or entity)

Seller: \_\_\_\_\_  
(print name of individual or entity)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Its: \_\_\_\_\_  
(if Seller is an entity)

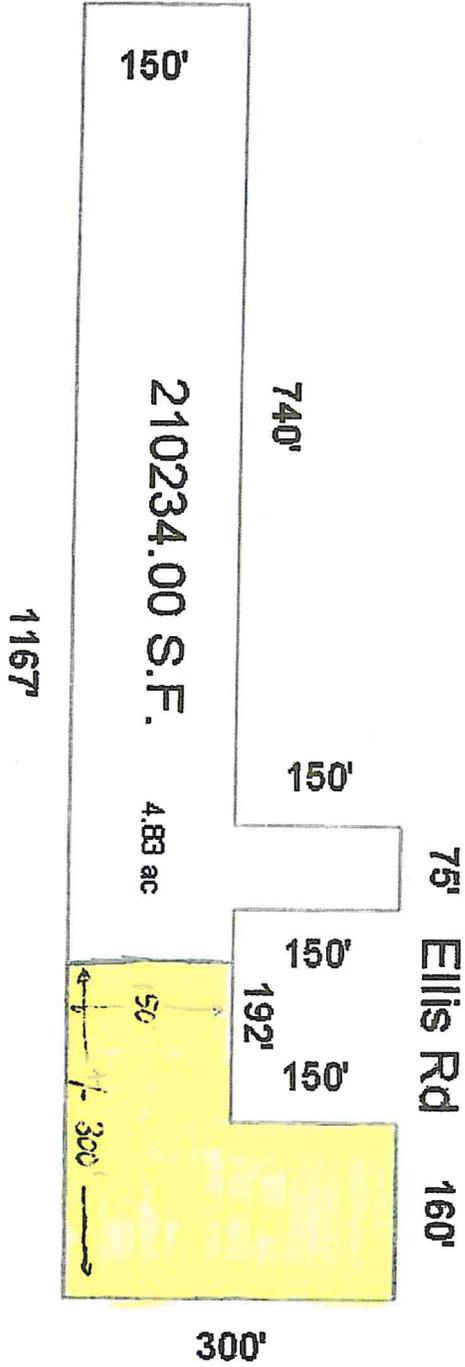
Its: \_\_\_\_\_  
(if Seller is an entity)

Property Address: Lot 31 Ind'l Park + 735 Ellis  
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Revision Date 5/2016

Buyer's Initials   Seller's Initials

EXHIBIT 1

Robert Hunter Dr



Sketch by Apex Mapping™

27-120-200-0004-00

COUNTY OF MUSKOGEE

735 E ELLIS RD

1/16/2019