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**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL**  
**Room 121A, 1400 East Washington Avenue, Madison**  
**Contact: Erin Karow (608) 266-2112**  
**May 2, 2018**

*The following agenda describes the issues that the Council plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions and deliberations of the Council.*

**AGENDA**

**9:30 A.M.**

**OPEN SESSION – CALL TO ORDER – ROLL CALL**

**A. Adoption of Agenda (1)**

**B. Approval of Minutes from February 14, 2018 (2)**

**C. Administrative Matters**

- 1) New Member Introductions
- 2) Department Update
- 3) Real Estate Examining Board Update

**D. Review of Real Estate Contractual Forms for Revision**

- 1) **WB-11– Residential Offer to Purchase**
  - a) Review of Proposed Revisions and Memo **(3-38)**
  - b) Original Document **(39-47)**

**E. Public Comments**

**ADJOURNMENT**

**NEXT SCHEDULED MEETING: JUNE 27, 2018**

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MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 1400 East Washington Avenue, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL  
MEETING MINUTES  
February 14, 2018**

**PRESENT:** Debra Conrad, John Drzewiecki, Michael Gordon, Cori Lamont, Richard Marino, Kim Moermond, Jonathan Sayas, Gary Tritz, Thomas Weber, Robert Webster (*left at 1: 46 p.m.*), Pamela Widen

**EXCUSED:** Joseph Busch, Casey Clickner

**STAFF:** Erin Karow, Executive Director; Laura Smith, Bureau Assistant

**CALL TO ORDER**

Richard Marino, Chair, called the meeting to order at 9:37 a.m. A quorum of eleven (11) members was confirmed.

**ADOPTION OF AGENDA**

**MOTION:** Michael Gordon moved, seconded by Cori Lamont, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES**

**MOTION:** Debra Conrad moved, seconded by John Drzewiecki, to approve the minutes of January 10, 2017 as published. Motion carried unanimously.

**ADJOURNMENT**

**MOTION:** Gordon moved, seconded by Widen, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 2:16 p.m.

**WB-11 RESIDENTIAL OFFER TO PURCHASE**

1 LICENSEE DRAFTING THIS OFFER ON \_\_\_\_\_ [DATE] IS (AGENT OF BUYER)  
2 (AGENT OF SELLER/LISTING FIRM) (AGENT OF BUYER AND SELLER) **STRIKE THOSE NOT APPLICABLE**

3 **GENERAL PROVISIONS** The Buyer, \_\_\_\_\_  
4 \_\_\_\_\_, offers to purchase the Property known as [Street Address] \_\_\_\_\_  
5 \_\_\_\_\_ in the \_\_\_\_\_  
6 of \_\_\_\_\_, County of \_\_\_\_\_ Wisconsin (insert  
7 additional description, if any, at lines xxx-xxx or xxx-xxx or attach as an addendum per line xxx), on the following terms:

8 ■ PURCHASE PRICE: \_\_\_\_\_  
9 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

10 ■ EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_  
11 will be mailed, or commercially or personally delivered within \_\_\_\_\_ days ("5" if left blank) of acceptance to  
12 the listing firm or \_\_\_\_\_.

13 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.

14 ■ INCLUDED IN PURCHASE PRICE is the Property, all Fixtures on the Property as of the date stated on line 1 (unless  
15 excluded at lines xx-xx), and the following additional items: \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_.

20 **NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included or  
21 not included.**

22 ■ NOT INCLUDED IN PURCHASE PRICE: \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_.

25 **CAUTION: Identify Fixtures that are on the Property (see lines xxx-xxx) to be excluded by Seller or which are rented  
26 (e.g., water softeners or other water treatment systems, LP tanks, etc.) and will continue to be owned by the lessor.**

27 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical  
28 copies of the Offer.

29 **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines  
30 running from acceptance provide adequate time for both binding acceptance and performance.**

31 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on  
32 or before \_\_\_\_\_. Seller may keep the Property on the  
33 market and accept secondary offers after binding acceptance of this Offer.

34 **CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**

35 **INCLUSION OF OPTIONAL PROVISIONS** Terms of this Offer that are preceded by an OPEN BOX (  ) are part of this  
36 offer ONLY if the box is marked such as with an "X". They are not part of this offer if marked "N/A" or are left blank.

37 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and  
38 written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines xx-xx.

39 (1) **Personal:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line  
40 xx or xx.

41 **Name of Seller's recipient for delivery, if any (optional):** \_\_\_\_\_

42 **Name of Buyer's recipient for delivery, if any (optional):** \_\_\_\_\_

43  (2) **Fax:** fax transmission of the document or written notice to the following number:  
44 Seller: ( \_\_\_\_\_ ) Buyer: ( \_\_\_\_\_ )

45  (3) **Commercial:** depositing the document or written notice, fees prepaid or charged to an account, with a commercial  
46 delivery service, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address at line  
47 xx or xx.

48  (4) **U.S. Mail:** depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the  
49 Party, or to the Party's recipient for delivery, for delivery to the Party's address.

50 Address for Seller: \_\_\_\_\_

51 Address for Buyer: \_\_\_\_\_

52  (5) **E-Mail:** electronically transmitting the document or written notice to the e-mail address.

53 E-Mail address for Seller: \_\_\_\_\_

54 E-Mail address for Buyer: \_\_\_\_\_

55 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or **Actual Receipt** by, any named Buyer or Seller  
56 constitutes personal delivery to, or **Actual Receipt** by, all Buyers or Sellers.

57 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this  
58 Offer at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx, or lines xxx-xxx if the Property is leased. At time of  
59 Buyer's occupancy, Property shall be in **bBroom sSwept condition** and free of all debris, **refuse**, and personal property except  
60 for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be given  
61 subject to tenant's rights, if any.

62 **DEFINITIONS**

63 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or  
64 written notice physically in the Party's possession, regardless of the method of delivery. Should this standard be retained  
65 versus just delivery, i.e., when a document is emailed??

66 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions Affecting the Property or Transaction" are  
67 defined to include:

68 a. Defects in the roof, basement or foundation (including cracks, seepage and bulges), electrical system, or part of the  
69 plumbing system (including the water heater, water softener and swimming pool); or basement, window, or plumbing leaks;  
70 overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions.

71 b. Defects in heating and air conditioning system (including the air filters and humidifiers); in a wood burning stove or  
72 fireplace; or caused by a fire in a stove or fireplace or elsewhere on the Property.

73 c. Defects related to smoke detectors or carbon monoxide detectors, or a violation of applicable state or local smoke  
74 detector or carbon monoxide detector laws.

75 d. Defects in any structure, or mechanical equipment included as Fixtures or personal property.

76 e. Rented items located on the Property such as a water softener or other water conditioner system.

77 f. Defects caused by unsafe concentrations of, or unsafe conditions on the Property relating to, radon, radium in water  
78 supplies, lead in paint, soil or water supplies, unsafe levels of mold, asbestos or asbestos-containing materials or other  
79 potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other hazardous or toxic  
80 substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but  
81 not directly serving the Property.

82 **NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential**  
83 **properties built before 1978.**

84 g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic  
85 substances on neighboring properties.

86 f. Property is served by a joint well; Defects related to a joint well serving the Property; or Defects in a well on the Property  
87 or in a well that serves the Property, including unsafe well water.

88 g. A septic system or other private sanitary disposal system serves the Property; Defects in the septic system or other  
89 sanitary disposal system on the Property; or any out-of-service septic system serving the Property not closed or abandoned  
90 according to applicable regulations.

91 h. Underground or aboveground fuel storage tanks on or previously located on the Property; or Defects in the underground  
92 or aboveground fuel storage tanks on or previously located on the Property. (The owner, by law, may have to register the  
93 tanks with the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708,  
94 whether the tanks are in use or not. Department regulations may require closure or removal of unused tanks.)

95 i. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased); or Defects in an "LP"  
96 tank on the Property.

97 j. Notice of property tax increases, other than normal annual increases, or pending Property reassessment; remodeling that  
98 may increase the Property's assessed value; pending special assessments; or Property is within a special purpose district,  
99 such as a drainage district, that has authority to impose assessments.

100 k. Proposed construction of a public project that may affect use of the Property; Property additions or remodeling affecting  
101 Property structure or mechanical systems during Seller's ownership without required permits; or any land division involving the  
102 Property without required state or local permits.

103 l. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit and  
104 there are common areas associated with the Property that are co-owned with others.

105 m. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain,  
106 wetland or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin Department  
107 of Natural Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures related to  
108 shoreland conditions, enforceable by the county.

109 n. Nonconforming uses of the Property; conservation easements, restrictive covenants or deed restrictions on the Property;  
110 or nonowners having rights to use part of the Property, including, but not limited to, rights-of-way and easements other than  
111 recorded utility easements.

112 o. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment  
113 conversion charge; or payment of a use-value assessment conversion charge has been deferred.

114 p. All or part of the Property is subject, enrolled in, or in violation of a farmland preservation agreement, Forest Crop Law,  
115 Managed Forest Law, the Conservation Reserve Program, or a comparable program.

- 116 q. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will be  
 117 transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of which  
 118 the Property owner is a member.
- 119 r. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint  
 120 driveway) affecting the Property.
- 121 s. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance  
 122 claims relating to damage to the Property within the last five years.
- 123 t. A pier attached to the Property not in compliance with state or local pier regulations.
- 124 u. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other  
 125 insect infestations.
- 126 v. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or  
 127 more burial sites on the Property.
- 128 w. Other Defects affecting the Property.

129 **(Definitions Continued on page 4)**

130 **CLOSING** This transaction is to be closed on no later than  
 131 \_\_\_\_\_ at the place selected by (Buyer)(Seller) ~~STRIKE ONE~~ ("Seller" if neither is  
 132 stricken). If the date for closing falls on a weekend, or federal or state holiday, the closing date shall be the next Business Day.  
 133 Exercise extreme caution if wiring funds for closing. Confirm wiring instructions with an independently obtained phone number.

134 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:  
 135 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association  
 136 assessments, fuel and \_\_\_\_\_.

137 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**

138 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

139 Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

140  The net general real estate taxes for the preceding year, or the current year if available (Net general real estate  
 141 taxes are defined as general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE  
 142 APPLIES IF NO BOX IS CHECKED)

143  Current assessment times current mill rate (current means as of the date of closing)

144  Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior  
 145 year, or current year if known, multiplied by current mill rate (current means as of the date of closing)

146  \_\_\_\_\_.

147 **CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be**  
 148 **substantially different than the amount used for proration especially in transactions involving new construction,**  
 149 **extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor**  
 150 **regarding possible tax changes.**

151  Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on  
 152 the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5  
 153 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall  
 154 re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation  
 155 and is the responsibility of the Parties to complete, not the responsibility of the real estate firms in this transaction.

156 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights  
 157 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the  
 158 (written) (oral) ~~STRIKE ONE~~ lease(s), if any, are \_\_\_\_\_

159 \_\_\_\_\_.

160 \_\_\_\_\_ . Insert additional terms, if any, at lines xxx-xxx or xxx-xxx or attach as an addendum per line 434.

161 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property which includes 1-4 dwelling units to  
 162 provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been  
 163 inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example,  
 164 personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The  
 165 law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the  
 166 contract of sale . . . , to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does  
 167 not receive a report within the 10 days may, within 2 business days after the end of that 10 day period, rescind the contract of  
 168 sale . . . by delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission  
 169 rights if a Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is  
 170 submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding  
 171 rescission rights.

172 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no  
 173 notice or knowledge of Conditions Affecting the Property or Transaction (lines xx-xxx) other than those identified in Seller's  
 174 Real Estate Condition Report dated \_\_\_\_\_, which was received by Buyer prior to Buyer

175 signing this Offer and which is made a part of this Offer by reference COMPLETE DATE OR STRIKE AS APPLICABLE and

176

177 INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT

178 ADDITIONAL PROVISIONS/CONTINGENCIES

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186 DEFINITIONS CONTINUED FROM PAGE 2

187 ■ BUSINESS DAY: "Business Day" means a calendar day other than Saturday, Sunday, any legal public holiday under  
188 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive  
189 registered mail or make regular deliveries on that day.

190 ■ DEADLINES: "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding  
191 the day the event occurred and by counting subsequent calendar days. The deadline expires at ~~midnight~~ Midnight on the last day.  
192 Additionally, ~~Deadlines expressed as a specific number of Business Days are calculated in the same manner except that~~  
193 only Business Days are counted while other days are excluded. exclude Saturdays, Sundays, any legal public holiday under  
194 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive  
195 registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the  
196 occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours  
197 per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as  
198 closing, expire at ~~midnight~~ Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

199 ■ DEFECT: "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would  
200 significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would  
201 significantly shorten or adversely affect the expected normal life of the premises.

202 ■ FIXTURE: A "Fixture" is an item of property which is physically attached to or so closely associated with land, buildings or  
203 improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily  
204 removable without damage to the premises, items specifically adapted to the premises and items customarily treated as  
205 fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric  
206 lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached  
207 equipment; water heaters, water softeners and treatment systems; sump pumps; attached or fitted floor coverings; awnings;  
208 attached antennas and satellite dishes (but not the component parts); audio/visual wall mounting brackets (but not the  
209 audio/visual equipment); garage door openers and remote controls; installed security systems; central vacuum systems and  
210 accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; in-ground pet  
211 containment systems (but not the collars); storage buildings on permanent foundations and docks/piers on permanent  
212 foundations.

213 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water  
214 treatment systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines xx-xx.**

215 ■ PROPERTY: Unless otherwise stated, "Property" means the real estate described at lines x-x.

216 PROPERTY DIMENSIONS AND SURVEYS Buyer acknowledges that any land, building or room dimensions, or total  
217 acreage or building square footage figures, provided to Buyer by Seller or by a ~~a~~ firm or its agents, may be approximate  
218 because of rounding, formulas used or other reasons, unless verified by survey or other means.

219 **CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land, building  
220 or room dimensions, if material.**

221 MAINTENANCE Seller shall maintain the Property and all personal property included in the purchase price (see lines xx-xx)  
222 (hereinafter Included Property) until the earlier of closing or Buyer's occupancy, in materially the same condition as of the date  
223 of acceptance of this Offer, except for ordinary wear and tear.

224 PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING If, prior to closing, the Property is damaged in an amount  
225 of not more than 5% of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer in writing, and  
226 will be obligated to restore the Property to the same condition it was at the date on Line 1 of this Offer. Seller shall provide  
227 Buyer with copies of all required permits and lien waivers for the lienable repairs no later than closing. Seller shall maintain the  
228 Property and all personal property included in the purchase price (see lines xx-xx) (hereinafter Included Property) until the  
229 earlier of closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for  
230 ordinary wear and tear. If, prior to closing, the Included Property is damaged in an amount of not more than (five percent (5%)  
231 of the selling price)(\$ \_\_\_\_\_) [STRIKE AND COMPLETE AS APPLICABLE] ("five percent (5%) of the selling  
232 price" if none specified), Seller shall be obligated to repair the Included Property and restore it to the same condition that it  
233 was in on the day as of the date on line 1 of this Offer. (Seller) (Buyer) [STRIKE ONE] ("Seller" if neither is stricken) shall  
234 obtain an estimate from a qualified third party to determine the amount of damage for the purposes of this section and the

235 ~~percentage of the selling price. No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and~~  
236 ~~restoration.~~ If the damage shall exceed ~~such sum~~ 5% of the purchase price, Seller shall promptly notify Buyer in writing of the  
237 damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage,  
238 Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the ~~Included~~ Property, plus a credit towards  
239 the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land  
240 contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the ~~Included~~  
241 Property.

242 **BUYER'S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or  
243 Seller's agent, Buyer shall have the right to walk through the Property ~~solely~~ to determine that there has been no significant  
244 change in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any  
245 defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

246 IF LINE xxx IS NOT MARKED OR IS MARKED N/A LINES xxx-xxx APPLY.

247  **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer ~~being able to obtain~~ delivering to  
248 Seller a written ~~(INSERT LOAN PROGRAM OR SOURCE)~~ loan type or specific lender, if any first  
249 mortgage loan commitment as described below, within \_\_\_\_\_ days ("~~60" if left blank??~~) of acceptance of this Offer. The  
250 financing selected shall be in an amount of not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_\_\_  
251 years, amortized over not less than \_\_\_\_\_ years. Initial monthly payments of principal and interest shall not exceed \$  
252 \_\_\_\_\_. ~~Buyer acknowledges that the lender's required~~ Monthly payments may also include 1/12th of the estimated net  
253 ~~annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums.~~ monthly payments may  
254 also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance  
255 premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points ~~and/or loan origination~~  
256 fee in an amount not to exceed \_\_\_\_\_% of the loan.

257 **LOAN AMOUNT ADJUSTMENT** If the purchase price under this Offer is modified, ~~the any~~ financed amount, unless  
258 otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly  
259 payments shall be adjusted as necessary to maintain the term and amortization stated above.

260 ~~NOTE: Monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums,~~  
261 ~~and private mortgage insurance premiums. Monthly payments may~~

262 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE xxx or xxx.**

263  **FIXED RATE FINANCING:** The annual rate of interest shall not exceed \_\_\_\_\_%.

264  **ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed \_\_\_\_\_%. The initial interest  
265 rate shall be fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_% per  
266 year, ~~and by not more than \_\_\_\_\_% a second time and annually thereafter.~~ The maximum interest rate during the  
267 mortgage term shall not exceed \_\_\_\_\_%. Monthly payments of principal and interest may be adjusted to reflect  
268 interest changes.

269 If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines  
270 xxx-xxx or xxx-xxx or in an addendum attached per line xxx.

271 **BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, ~~wire fees, and loan origination~~  
272 ~~fees,~~ to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer  
273 qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of  
274 the written loan commitment no later than the deadline at line xxx. **Buyer and Seller agree that delivery of a copy of any**  
275 **written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after**  
276 **review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. This may be signified**  
277 **by Buyer's signature on the loan commitment.** Buyer's written direction shall accompany the loan commitment.  
278 **Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability or if not accompanied by the**  
279 **buyer's written direction/instruction to deliver said commitment letter.**

280 **CAUTION: The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide**  
281 **the loan. BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER-SUBAGENTS SHALL NOT DELIVER A**  
282 **LOAN COMMITMENT TO SELLER OR SELLER'S AGENT** WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR  
283 **UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.**

284 **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment; Seller may terminate this  
285 Offer if Seller delivers a written notice of termination to Buyer prior to Seller's ~~Actual Receipt~~ of a copy of Buyer's written loan  
286 commitment ~~and Buyer's written delivery directions.~~ ~~In the event Seller delivers to Buyer a written notice of termination, Buyer~~  
287 ~~will have the right to cure the breach by delivering the written loan commitment and delivery directions to seller within \_\_\_\_\_~~  
288 ~~hours ("24" if left blank) of Seller's delivery of the notice of termination.~~ ~~Seller has no ability to reject a loan commitment unless~~  
289 ~~Seller has added standards to this contingency that are not met.~~

290 **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already  
291 delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of  
292 same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is  
293 named in this Offer, Seller shall then have 10 days to deliver to Buyer written notice of Seller's decision to finance this  
294 transaction on the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing

295 extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer authorizes Seller to obtain  
296 any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

297 ■ **IF THIS OFFER IS NOT CONTINGENT ON FINANCING:** Within 7 days of acceptance, a financial institution or third party  
298 in control of Buyer's funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification,  
299 sufficient funds to close. If such written verification is not provided, Seller has the right to terminate this Offer by delivering  
300 written notice to Buyer. Buyer may or may not obtain mortgage financing but does not need the protection of a financing  
301 contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands  
302 and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an  
303 appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.

304  **APPRAISAL CONTINGENCY:** This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised  
305 at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated  
306 subsequent to the date stated on line 1 indicating an appraised value for the Property equal to or greater than the agreed  
307 upon purchase price. This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days ("45" if left blank)  
308 of acceptance, delivers to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or  
309 greater than the agreed upon purchase price, accompanied by a written notice of termination. Seller may satisfy this Appraisal  
310 Contingency by delivering a written amendment to Buyer within five (5) days of delivery of the appraisal report, amending the  
311 agreed upon purchase price to match the appraised value. Buyer agrees to deliver an accepted copy of the amendment to  
312 Seller within five (5) days of delivery of Seller's proposed price amendment. This Offer shall be null and void if Buyer makes  
313 timely delivery of the appraisal report and Seller either (a) delivers notice that Seller will not change the price or (b) Seller does  
314 not timely deliver the written amendment changing the purchase price. Buyer and Seller agree to make other amendments to  
315 this Offer necessitated by this change to the purchase price.

316 **CAUTION: An appraisal ordered by Buyer's lender may not be received until shortly before closing. Consider whether  
317 deadlines provide adequate time for performance**

318 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the  
319 Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as  
320 defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple  
321 listing service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information  
322 and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers  
323 researching comparable sales, market conditions and listings, upon inquiry.

324 **DEFAULT** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and  
325 conditions of this Offer. A material failure to perform any obligation under this Offer is a default which may subject the  
326 defaulting party to liability for damages or other legal remedies.

327 If Buyer defaults, Seller may:

- 328 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or  
329 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual  
330 damages.

331 If Seller defaults, Buyer may:

- 332 (1) sue for specific performance; or  
333 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

334 In addition, the Parties may seek any other remedies available in law or equity.

335 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
336 discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution  
337 instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of  
338 law those disputes covered by the arbitration agreement.

339 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD  
340 READ THIS DOCUMENT CAREFULLY. THE FIRM AND ITS AGENTS MAY PROVIDE A GENERAL EXPLANATION OF  
341 THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS  
342 CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN  
343 ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

344 **ENTIRE CONTRACT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller  
345 regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and  
346 inures to the benefit of the Parties to this Offer and their successors in interest.

347 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons  
348 registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.doc.wi.gov> or  
349 by telephone at (608) 240-5830.

350  **TESTING CONTINGENCY:** This Offer is contingent upon (Buyer obtaining)(Seller providing) [STRIKE ONE] ("Buyer  
351 obtaining" if neither is stricken) a current written report from a qualified independent expert documenting the results of the  
352 following test(s) conducted pursuant to applicable government or industry protocols and standards and which indicate no  
353 unsafe levels of (indicate substances or compounds to be tested, e.g., radon, asbestos, etc.): \_\_\_\_\_

354 \_\_\_\_\_, no later than \_\_\_\_\_ days ("21" days if left blank) after acceptance, at (Buyer's)(Seller's)

355 [STRIKE ONE] ("Buyer's" if neither is stricken) expense. Specify any protocols, testing contractors, labs, standards/levels  
356 constituting a Defect, financial limits, acceptable repair methodology, etc. that shall be applied: \_\_\_\_\_

357 \_\_\_\_\_  
358 The Property shall be returned to its condition prior to the test(s) unless otherwise agreed.

359 This testing contingency shall be deemed satisfied unless Buyer, within five (5) days of the earlier of 1) Buyer's receipt of the  
360 testing report(s) or 2) the deadline for delivery of said report(s), delivers to Seller a copy of the testing report(s) and a written  
361 notice identifying the Defect(s) to which Buyer objects (Notice of Defects). For purposes of this Testing Contingency, Defects  
362 (as defined in the Offer) do not include structural, mechanical or other conditions that nature and extent of which Buyer had  
363 actual knowledge or written notice before signing the Offer.

364 **Right to Cure:** Seller (shall) (shall not) [STRIKE ONE] have the right to cure ("shall" if neither is stricken). If Seller has the right  
365 to cure, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of Buyer's delivery of the Notice of  
366 Defects to Seller, a written notice stating Seller's election to cure, (2) curing the defects in a Good and Workmanlike Manner  
367 and (3) delivering to Buyer a report detailing the work done within 3 days prior to closing. This Offer shall be null and void if  
368 Buyer makes timely delivery of the Notice of Defects and written testing report(s) and (1) Seller does not have the right to cure  
369 or (2) Seller has a right to cure but (a) Seller delivers written notice to Buyer stating that Seller will not cure or (b) Seller does  
370 not timely deliver written notice of Seller's election to cure. This Offer shall be null and void if Buyer delivers notice to Seller  
371 within 5 days of the delivery deadline stating Seller failed to deliver report(s) by the applicable deadline(s) if Seller was  
372 responsible to provide the report(s).

373 **☐ RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer having a qualified third party perform a radon  
374 test at the Property in a manner consistent with applicable EPA and Wisconsin Department of Health Services (DHS)  
375 protocols and standards and furnish a current written report indicating the radon level is less than \_\_\_ picoCuries ("4.0" if left  
376 blank) per liter (pCi/L), at (Buyer's) (Seller's) [STRIKE ONE] ("Buyer's" if neither is stricken) expense. This contingency shall  
377 be deemed satisfied unless Buyer, no later than \_\_\_\_\_ days ("20" if left blank) (after acceptance)(prior to closing)  
378 STRIKE ONE ("prior to closing" if neither is stricken), delivers to Seller a written copy of the radon test results report indicating  
379 a radon level of 4.0 pCi/L or higher. Seller (shall)(shall not) [STRIKE ONE] ("shall" if neither is stricken) have the right to cure.  
380 See lines xxx-xxx regarding the Right to Cure.

381 **☐ TESTING CONTINGENCY:** This Offer is contingent upon (Buyer obtaining)(Seller providing) [STRIKE ONE] ("Buyer  
382 obtaining" if neither is stricken) a current written report from a qualified independent expert documenting the results of the  
383 following test(s) conducted pursuant to applicable government or industry protocols and standards [indicate substances or  
384 compounds to be tested, e.g., asbestos (see <http://www2.epa.gov/asbestos/protect-your-family>), etc.]:  
385 \_\_\_\_\_, no later than \_\_\_\_\_ days ("20" if left blank) (after acceptance)(prior to closing)  
386 STRIKE ONE ("prior to closing" if neither is stricken), at (Buyer's) (Seller's) [STRIKE ONE] ("Buyer's" if neither is stricken)  
387 expense. Specify any protocols, testing contractors, labs, standards/levels constituting a Defect, financial limits, acceptable  
388 repair methodology, etc.: \_\_\_\_\_

389 \_\_\_\_\_ . Seller (shall)(shall  
390 not) STRIKE ONE ("shall" if neither is stricken) have the right to cure. See lines xxx-xxx regarding the Right to Cure.

391 **■ CONTINGENCY SATISFACTION/RIGHT TO CURE (radon or testing contingency):** The contingency shall be deemed  
392 satisfied unless Buyer, within 5 days of the earlier of 1) Buyer's Actual Receipt of the applicable testing report(s) or 2) the  
393 deadline for delivery of said report(s), delivers to Seller a copy of the written report(s) and written notice stating why the  
394 report(s) do(es) not satisfy the contingency standard. If Seller has the right to cure, Seller may satisfy this contingency by (1)  
395 delivering a written notice of Seller's election to cure within 10 days of receipt of Buyer's notice; (2) and by curing the defects  
396 in a good and workmanlike manner that satisfies the standard set forth in the selected contingency and by giving Buyer a  
397 report of the work done 3 days prior to closing. This Offer shall be null and void if Buyer timely delivers the above written  
398 notice(s) and report(s) to Seller and (1) Seller does not have the right to cure; or (2) Seller has a right to cure but: a) Seller  
399 delivers written notice that Seller will not cure or b) Seller does not timely deliver the notice of election to cure. This Offer shall  
400 be null and void if Buyer delivers notice to Seller, within 5 days of the delivery deadline, stating Seller failed to deliver report(s)  
401 by the respective stated deadline [if Seller was responsible to provide the report(s)].

402 **ATTORNEY APPROVAL CONTINGENCY** This Offer is contingent upon the good faith review and approval of the Offer by  
403 the respective attorneys of the Buyer and Seller, which approval shall not be unreasonably withheld. This contingency shall be  
404 deemed satisfied unless Buyer's and/or Seller's attorney, within \_\_\_\_\_ ("5" if none indicated) days of acceptance of this Offer,  
405 delivers to the other party: (1) a copy of the written statement from the objecting party's attorney which specifically identifies  
406 the provisions of the Offer that the attorney objects to, and (2) an amendment which identifies the proposed modifications to  
407 the terms of the Offer.

408 **NOTE:** Buyer's or Seller's attorney's disapproval may only be based upon the following factors: adequacy of the Property  
409 description, sufficiency as to definiteness or enforceability of the Offer, reasonableness and sequence of deadline dates,  
410 appropriateness of instrument of conveyance, the nature and extent of title to be transferred to Buyer, and \_\_\_\_\_  
411 \_\_\_\_\_ . Disapproval may not be based upon purchase price,  
412 the cost of credits payable by Seller, or the commission agreement between the parties and the firms.

413 A failure of the non-objecting party to accept the proposed amendment, if any, within five (5) days of the objecting party's  
414 delivery of the amendment, shall render this Offer null and void. A failure of either Party to timely object to the terms of the

415 Offer and provide a proposed amendment to the terms of the Offer shall be deemed a waiver of this contingency. Both Buyer  
416 and Seller agree to pay the cost of their respective attorney's services pertinent to this contingency.

417  **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's  
418 property located at \_\_\_\_\_,  
419 no later than \_\_\_\_\_ ("95 days after acceptance if none stated). If Buyer does not deliver a copy of the deed  
420 from the closing of the sale of Buyer's property to Seller by the stated deadline then [Seller may deliver a notice of termination  
421 and this Offer shall be null and void??] [this Offer shall not be enforceable against the Buyer who may proceed with this Offer  
422 at Buyer's discretion??] [Another consequence??] Buyer may unilaterally waive this contingency.

423  **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance that  
424 another offer has been accepted. If Buyer does not deliver to Seller: **CHECK AND COMPLETE AS APPLICABLE**

425  Written waiver of Closing of Buyer's Property Contingency

426  Written waiver of Financing Contingency

427  Written waiver/Proof of bridge loan financing

428  Proof of ability to close

429  \_\_\_\_\_ (other – specify)

430 **[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL**  
431 **CONTINGENCIES, OR PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)]** within \_\_\_\_ hours ("72" if left blank) of  
432 Buyer's Actual Receipt/delivery?? (the debate resurfaces, concerns either way!) of said notice, this Offer shall be null and  
433 void. Seller may unilaterally waive this Bump clause provision.

434  **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery  
435 of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior  
436 to any deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers.  
437 Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice  
438 that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than \_\_\_\_ days ("5" if left blank) after acceptance  
439 of this Offer. All other Offer deadlines which are run from acceptance shall run from the time this Offer becomes primary.

440 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3)  
441 occupancy; (4) date of closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in this  
442 Offer except: \_\_\_\_\_

443 \_\_\_\_\_  
444 \_\_\_\_\_ . If "Time is of the Essence" applies to a date or  
445 Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to  
446 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

#### 447 **TITLE EVIDENCE**

448 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed  
449 (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as  
450 provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements  
451 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use  
452 restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate  
453 Condition Report and in this Offer [this issue has been referred to the Wisconsin Land title Association and all of their smart  
454 attorneys and they will get back to us with a recommendation], general taxes levied in the year of closing and \_\_\_\_\_

455 \_\_\_\_\_  
456 \_\_\_\_\_  
457 \_\_\_\_\_

458 [Insert other allowable exceptions from title, if any (e.g., xxxxxx, yyyyyyy, zzzzzzz, etc.) which constitutes merchantable title  
459 for purposes of this transaction. Seller shall complete and execute the documents necessary to record the conveyance at  
460 Seller's cost and pay the Wisconsin Real Estate Transfer Fee.

461 **WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may**  
462 **prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making**  
463 **improvements to Property or a use other than the current use.**

464 ■ **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the  
465 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all  
466 costs of providing title evidence to Buyer. Buyer shall pay the costs of providing the title evidence required by Buyer's lender  
467 and recording the deed or other conveyance.

468 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's)  
469 **STRIKE ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after  
470 the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy  
471 exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap  
472 coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 353-359xxx-xxx).

473 ■ **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title  
474 insurance commitment is delivered to Buyer's attorney or Buyer no later than \_\_\_\_\_ days ("15" if left blank) (after

475 acceptance)(prior to closing) [STRIKE ONE] (“after acceptance” if neither is stricken),~~losing,~~ showing title to the Property as of  
476 a date no more than 15 days before delivery of such title evidence to be merchantable per lines 326-335xxx-xxx, subject only  
477 to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as  
478 appropriate.

479 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of  
480 objections to title by the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to  
481 remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is  
482 unable to remove said objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the  
483 objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be  
484 null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title  
485 to Buyer.

486 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior  
487 to the date stated on line 1 shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.  
488 “Levied” means the local municipal governing body has passed and published a final resolution describing the planned  
489 improvements and the assessment of benefits.

490 **CAUTION: Consider a special agreement if area assessments, property owners association assessments, special**  
491 **charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. “Other expenses” are**  
492 **one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments)**  
493 **relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all**  
494 **sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact**  
495 **fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).**

#### 496 **EARNEST MONEY**

497 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-12 and held in  
498 the trust account of the listing firm (Buyer's agent if Property is not listed, Seller's account if no firm is involved or a third party  
499 as designated on line 12), until applied to the purchase price or otherwise disbursed as provided in the Offer.

500 **CAUTION: Should persons other than a firm hold earnest money, an escrow agreement should be drafted by the**  
501 **Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special**  
502 **disbursement agreement.**

503 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after  
504 clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money.  
505 At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest  
506 money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said  
507 disbursement agreement has not been delivered to the firm holding the earnest money within 60 days after the date set for  
508 closing, that firm may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does  
509 not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as  
510 directed by court order; or (4) any other disbursement required or allowed by law. The firm may retain legal services to direct  
511 disbursement per (1) or to file an interpleader action per (2) and the firm may deduct from the earnest money any costs and  
512 reasonable attorneys' fees, not to exceed \$750, prior to disbursement.

513 ■ **LEGAL RIGHTS/ACTION:** The firm's disbursement of earnest money does not determine the legal rights of the Parties in  
514 relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the firm. At least 30 days prior to  
515 disbursement per (1) or (4) above, the firm shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or  
516 Seller disagree with the firm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement.  
517 Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with 1-4  
518 dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys regarding their  
519 legal rights under this Offer in case of a dispute. Both Parties agree to hold the firm harmless from any liability for good faith  
520 disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services  
521 regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

522 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of  
523 this Offer. An “inspection” is defined as an observation of the Property, which does not include an appraisal or testing of the  
524 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source,  
525 which are hereby authorized. A “test” is defined as the taking of samples of materials such as soils, water, air or building  
526 materials from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors,  
527 testers and appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in  
528 this Offer. Buyer and licensees may be present at all inspections and testing. Except as otherwise provided, Seller's  
529 authorization for inspections does not authorize Buyer to conduct testing of the Property.

530 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the**  
531 **test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other**  
532 **material terms of the contingency.**

533 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed  
534 unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller

535 within \_\_\_\_\_ days ("4" if left blank) of receipt of each report. Seller acknowledges that certain inspections or tests may detect  
536 environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

537  **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 395-409xxx-xxx).  
538 This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the  
539 Property after the date on line 1 of this Offer which discloses no Defects. This Offer is further contingent upon a qualified  
540 independent inspector or independent qualified third party performing an inspection of \_\_\_\_\_  
541 \_\_\_\_\_ (list any Property component(s)  
542 to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order  
543 the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a  
544 written report resulting from an authorized inspection, provided they occur prior to the deadline specified at line xxx.  
545 Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

546 **CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well  
547 as any follow-up inspection(s).**

548 This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days ("20" if left blank) of acceptance, delivers to  
549 Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the  
550 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

551 **CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**  
552 For the purposes of this contingency, Defects (see lines xxx-xxx) do not include structural, mechanical or other conditions the  
553 nature and extent of which Buyer had actual knowledge or written notice before signing this Offer (lines xxx-xxx).

554 ■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects. If  
555 Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 7 days of  
556 Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and  
557 workmanlike manner; and (3) delivering to Buyer a written report detailing the work done at least 3 days prior to closing. This  
558 Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1)  
559 Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure  
560 or (b) Seller does not timely deliver the written notice of election to cure.

561  **ADDENDA:** The attached \_\_\_\_\_ is/are made part of this Offer.

562 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_  
563 \_\_\_\_\_  
564 \_\_\_\_\_  
565 \_\_\_\_\_  
566 \_\_\_\_\_  
567 \_\_\_\_\_  
568 \_\_\_\_\_  
569 \_\_\_\_\_

570 This Offer was drafted by [Licensee and Firm] \_\_\_\_\_

571 \_\_\_\_\_

572 (x) \_\_\_\_\_  
573 Buyer's Signature ▲ Print Name Here ► Date ▲

574 (x) \_\_\_\_\_  
575 Buyer's Signature ▲ Print Name Here ► Date ▲

576 **EARNEST MONEY RECEIPT** Firm acknowledges receipt of earnest money as per line xx of the above Offer.

577 Firm: \_\_\_\_\_ Signature of Agent for Firm: \_\_\_\_\_

578 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER  
579 SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY  
580 ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS  
581 OFFER.**

582 (x) \_\_\_\_\_  
583 Seller's Signature ▲ Print Name Here ► Date ▲

584 (x) \_\_\_\_\_  
585 Seller's Signature ▲ Print Name Here ► Date ▲

586 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_

587 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

588 This Offer is rejected \_\_\_\_\_ This Offer is countered [See attached counter] \_\_\_\_\_  
589 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

## OFFER TO PURCHASE REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee  
From: WRA Forms Committee  
Date: April 23, 2018  
RE: **WB-11 Residential Offer to Purchase**

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The 20180110WB-11WithTrackingwra0201 draft that accompanies this memo shows the result of the discussions of the WRA Forms Committee on February 1 as well as proposed provisions that are there for discussion purposes. As indicated in the memo, some provisions have been discussed by the committees while others are ideas thrown up on the board for committee commentary.

### **WB-11 Residential Offer to Purchase**

Changes to terminology were hopefully all caught, for example, “firm.” Please let us know if we missed any – we invariably did!

**NEW: Formatting and sequence:** once the provisions become more established we may explore the possibility structuring the sequence of offer provisions to follow the progression of a transaction and place all definitions and reference information in a separate section.

**Earnest Money- Lines 10-12:** adds a default of 5 days for the timeframe for additional earnest money. This was agreed upon by the WRA Forms Committee and the DSPS Real Estate Contractual Forms Advisory Committee even though a few thought the 5 day default might be a tiny bit too long. Note that the blank line on line 12 is intended to indicate if the money is to go to someone else.

**Included in Purchase Price – Line 14:** clarifies that the reference to the “date of this Offer” means the date on line 1. “Date of this Offer” appears 3 times in the WB-11 and there have been comments that it was not clear what date was referred to. This is intended to remedy any confusion. This was agreed upon by the WRA Forms Committee.

The DSPS Real Estate Contractual Forms Advisory Committee spent some time restructuring this section 14-19 which now reads:

■ INCLUDED IN PURCHASE PRICE is the Property, all Fixtures on the Property as of the date stated on line 1 (unless excluded at lines xx-xx), and the following additional items: \_\_\_\_\_

Also note that a few more blank lines to write on were added here. The WRA Forms Committee found these changes acceptable.

The DSPS Committee also did some reorganizing and placed the note that says, “NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included or not included” at lines 20-21. This was done because it was thought it would create separation between items included above it and things excluded below it and this way it would not get lost under the Caution about excluding fixtures. The WRA Forms Committee found these changes acceptable.

**Inclusion of Optional Provisions – Lines 35-36:** The provision that is there requires the box to be checked for optional provisions. We had anticipated a change to a provision that says if any part of the provision is completed then the whole provision is in – it applies. That would be similar to the provision on this issue in the GMAR Addendum A. However the WRS Forms Committee and the DSPS Committee

recommend that other than the tweak to the provision title, that it be left as it is. The main reason for this is that many companies crash print language on blank lines of various provisions in the offer and that would arguable then cause the provision to be included when that was not the intent. The discussion focused on: who do we protect? What is the greater sin? We have agents who fail to check the big box at the beginning of the provisions and we also have agents who do not line out language when working with offers with preprinted language filled in (they would have to strike this out or write in language saying that the provision is not included and not part of the offer). The conclusion was that agents should be held responsible to check the big box and that the Optional Provisions provision be left as is.

The DSPS Committee did some formatting changes and took the provision out of the all caps, put the provision in normal sentence font and changed the box from a square to a rectangle to better match the check boxes in the offer. The WRA Forms Committee found these changes acceptable.

### **Delivery of Documents and Written Notices – Lines 37-54**

Language was added to indicate that if a party cannot/will not give electronic consent and places his or her agent's email address on the respective email line the party is authorizing the use of the agent's email address on his or her behalf. This is based on the workaround discussed at <http://www.wra.org/WREM/June17/ElectronicConsent/>. In this revised section it is assumed that a party consents to using his or her agent's email if the party signs the offer.

The DSPS Committee agreed with this concept but reworked the language and made assorted modifications to the existing language to make it simpler and more concise. The section now reads:

**DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines xx-xx.

(1) **Personal:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line xx or xx.

Seller's recipient for delivery, ~~(optional if any):~~ \_\_\_\_\_

Buyer's recipient for delivery, ~~(optional if any):~~ \_\_\_\_\_

(2) **Fax:** fax transmission of the document or written notice to the following number:

Seller: (\_\_\_\_\_) \_\_\_\_\_ Buyer: (\_\_\_\_\_) \_\_\_\_\_

(3) **Commercial:** depositing the document or written notice, fees prepaid or charged to an account, with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address at line xx or xx.

(4) **U.S. Mail:** depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address.

Address for Seller: \_\_\_\_\_

Address for Buyer: \_\_\_\_\_

(5) **E-Mail:** electronically transmitting the document or written notice to the e-mail address.

E-Mail address for Seller: \_\_\_\_\_

E-Mail address for Buyer: \_\_\_\_\_

**NOTE:** ~~In a consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes additional disclosures and electronic consent may need to be obtained from the parties under federal and state E-sign laws.~~

- **NEW: With regard to the language in the Note at the end of the Delivery of Documents and Written Notices section, there was conversation about a further modification. One voice said that the note should be prefaced to limit it to situations where the party's own email address in placed on line 57 or 58 so that agents would not be confused and think they had to do more for the offer if the agents' email addresses were used. Another suggested option was to remove the note. Another was concerned that if the note was changed too much that**

**agents would come away thinking that they did not have to have electronic consent if the agent was forwarding offer documents to the client or customer via email. This may very well be addressed in listing contracts and buyer agency agreements but no such “automatic” opportunity for subagents. There is merit in both sides of this. Also there are no email police.**

The WRA Forms Committee and the DSPS Committee both thought it best to **remove the NOTE**. This may leave a training issue for agents working with buyer customers as far as getting electronic consent to email back and forth.

Also note the changes shown above to help resolve reported confusion regarding **recipients for delivery** – **instead of “(optional),” it says “if any.”** It seems there is a training issue here. The recipient for delivery comes into play with regard to personal delivery, mail and commercial delivery.

- **NEW: Lines 41 and 42 were further modified to say “Name of”** Seller’s recipient for delivery, if any, and **“Name of”** Buyer’s recipient for delivery, if any.

### **Actual Receipt – Lines 55-56, 63-65 -- General discussion:**

We hear rumblings that some would like to forego the Actual Receipt standard, and presumably return to the days where the standard was delivery. When a document is emailed there don’t seem to be too many instances where the server malfunctions or something goes awry such that email sent does not mean that an email was received, putting the parties in the situation where the receiving party is unaware that there is a message and they have a deadline to take action – but it does happen sometimes.

With other delivery methods like mail or fax, clearly there may be malfunctions or time delays: a document mailed is delivered when mailed but may not be received for several days, perhaps after the applicable deadline for party action; a document faxed does not mean that the document is received. If a document is delivered to an agent it is crucial that they get the document to the party ASAP but what if they cannot find them, reach them, etc. – again the applicable deadline for action might pass by before they even receive the document.

The WRA Forms Committee had a discussion along similar lines. One example was brought up of an actual elderly couple with no electronics out camping in their RV. For them actual delivery would give them their only chance to act because delivery could happen and deadlines pass them by without them ever knowing. On the other hand, several voices have a problem with abuses to the actual receipt standard and would prefer that if the agent is the recipient for delivery that notices just be delivered to the agent. Other brokers pointed out that actual receipt is a consumer protection standard and should be maintained in the state form, allowing others to modify their contracts as desired.

Although it does not specifically come up until later in the offer, the suggestion of the group seemed to be that there should be a choice of delivery or actual receipt in various provisions, including the bump notice, with a default of actual receipt.

It was also pointed out that problems can be avoided by following up with a phone call when important notices or documents are emailed.

- **The DSPS Committee discussed this a bit and tossed around a few ideas, such as whether the actual receipt definition should specifically address when email is actually received: when transmitted? When opened? There is software that can provide a report of when it was opened. Would it be best to have just one standard: delivery or actual receipt for**

**everything? Arguably it would need to be delivery of that were the case. The WRA Forms Committee chatted again briefly and seemed to be saying that Actual Receipt may be needed for the bump clause, seller termination and delivery of condominium disclosure materials.**

### **Occupancy – Lines 57-61:**

A reference to the Leasing provision was added as this might impact occupancy. Also a definition of “broom swept” was added and then later removed. This was agreed upon by both Forms Committees.

Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx, or lines xxx-xxx if the Property is leased. At time of Buyer's occupancy, Property shall be in ~~b~~Broom ~~s~~Swept condition and free of all debris, ~~refuse~~, and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any. ~~Seller must maintain the property in reasonably same condition as it was when offer was accepted. (Committee liked the substance here but language was not decided on.)~~

Could remove the words in black above **NO - DELETE**

**DELIVERY CONDITION Delivery condition is defined as: Seller shall be responsible for removing all debris, trash and personal property not included in sale. Seller shall vacuum all carpets and sweep all hard surface floors prior to closing. In addition, Seller shall until date of closing, be responsible for maintaining and mowing lawn, removing snow from drives and walks and arranging for removal of any and all items left in front of home as refuse, including prepaying any disposal fees associated therewith.**

Another possible version of this Delivery Condition definition: **NO - DELETE**

**DELIVERY CONDITION “Delivery Condition” means the Property shall be free from all debris, trash and personal property not included in sale, all carpets vacuumed, hard surface floors swept, lawn maintained and mowed, snow removed from driveway and sidewalks, and Seller prepaid disposal arrangements for removal of any items left in front of home/at the curb as refuse.**

The one modification that the DSFS Forms Committee did make/accept was to add the word “refuse” as shown in the draft at line 59 of the draft.

- **The WRA Forms Committee was not convinced that the word “refuse” was the best but chose not to object.**

### **Condition Affecting the Property or Transaction – Lines 66-128:**

The suggestion was to make sure this matched the RECR but there may be legislation coming that will revamp the RECR so this may not be a viable technique depending upon the timing.

The following has been modified so that the topics and issues in the RECR proposed legislation (2017 Assembly Bill 812) are also reflected in this list. The items will not directly match the RECR, which under the proposed format will have questions and examples of defects to prompt seller responses. We would not expect to include any examples unless you think otherwise. The list below is reorganized to match the sequence in the AB 812. We will fix the lettering once the substance is approved. AB 812 splits some of the prior disclosures into separate items – they may be recombined if the Committee so desires

but wanted to start from the perspective of AB 812. This bill has not yet passed the Senate so we will hold on further work on this section until that happens.

**NEW:** tracking was removed as the bill has been enacted into law effective July 1, 2018 (2017 Wis. Act 338 at <https://docs.legis.wisconsin.gov/2017/related/acts/338.pdf>)

CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION: “Conditions Affecting the Property or Transaction” are defined to include:

- a. Defects in the roof, basement or foundation (including cracks, seepage and bulges), electrical system, or part of the plumbing system (including the water heater, water softener and swimming pool); or basement, window, or plumbing leaks; overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions.
- b. Defects in heating and air conditioning system (including the air filters and humidifiers); in a wood burning stove or fireplace; or caused by a fire in a stove or fireplace or elsewhere on the Property.
- c. Defects related to smoke detectors or carbon monoxide detectors, or a violation of applicable state or local smoke detector or carbon monoxide detector laws.
- d. Defects in any structure, or mechanical equipment included as Fixtures or personal property.
- e. Rented items located on the Property such as a water softener or other water conditioner system.
- f. Defects caused by unsafe concentrations of, or unsafe conditions on the Property relating to, radon, radium in water supplies, lead in paint, soil or water supplies, unsafe levels of mold, asbestos or asbestos-containing materials or other potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other hazardous or toxic substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.

**NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.**

- g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.
- f. Property is served by a joint well; Defects related to a joint well serving the Property; or Defects in a well on the Property or in a well that serves the Property, including unsafe well water.
- g. A septic system or other private sanitary disposal system serves the Property; Defects in the septic system or other sanitary disposal system on the Property; or any out-of-service septic system serving the Property not closed or abandoned according to applicable regulations.
- h. Underground or aboveground fuel storage tanks on or previously located on the Property; or Defects in the underground or aboveground fuel storage tanks on or previously located on the Property. (The owner, by law, may have to register the tanks with the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Department regulations may require closure or removal of unused tanks.)
- i. “LP” tank on the Property (specify in the additional information whether the tank is owned or leased); or Defects in an “LP” tank on the Property.
- j. Notice of property tax increases, other than normal annual increases, or pending Property reassessment; remodeling that may increase the Property's assessed value; pending special assessments; or Property is within a special purpose district, such as a drainage district, that has authority to impose assessments.
- k. Proposed construction of a public project that may affect use of the Property; Property additions or remodeling affecting Property structure or mechanical systems during Seller's ownership without required permits; or any land division involving the Property without required state or local permits.
- l. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit and there are common areas associated with the Property that are co-owned with others.
- m. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain, wetland or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin Department of Natural Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county.

- n. Nonconforming uses of the Property; conservation easements, restrictive covenants or deed restrictions on the Property; or nonowners having rights to use part of the Property, including, but not limited to, rights-of-way and easements other than recorded utility easements.
- o. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment conversion charge; or payment of a use-value assessment conversion charge has been deferred.
- p. All or part of the Property is subject, enrolled in, or in violation of a farmland preservation agreement, Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program.
- q. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will be transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of which the Property owner is a member.
- r. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint driveway) affecting the Property.
- s. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance claims relating to damage to the Property within the last five years.
- t. A pier attached to the Property not in compliance with state or local pier regulations.
- u. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other insect infestations.
- v. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or more burial sites on the Property.
- w. Other Defects affecting the Property.

➤ **Is this good or are there further desired modifications? Any ideas regarding how to condense, combine and compress all of this is very much welcome!**

### **Closing – Lines 130-133:**

The “no later than” language was thought to be helpful because it will cover a situation if the date on the blank line turns out to be a weekend or a holiday – the closing can be held on the earlier business day and there is no need to do an amendment. But “no later than” is also problematic and confusing and some believe the closing should be the next business day.

The following change was mostly agreed to by both Committees, doing away with the “no later than” language and adding a way to avoid inadvertent scheduling that falls on holidays, weekends, etc. :

This transaction is to be closed on ~~no later than~~ \_\_\_\_\_  
 at the place selected by Seller. If the date for closing falls on a weekend, or federal or state holiday, the closing date shall be the next Business Day.

It was also noted that under TRID/CFPB that they do not count/include Saturdays as a business day.

**This debate has continued** regarding whether the “no later than” should be included and the WRA Forms Committee had pros and cons, saying that “no later than” is favored by lenders and in short sales, others saying that in this world of digital signatures that an amendment changing the closing date can be readily achieved. **New observation:** TX, MN, MI, OH, WA and IL all use the language “on or before.” The conclusion was reached for a compromise of sorts: to not include “no later than” but to include a long blank line where that may be written in if so desired.

➤ **Does this work or are there other suggestions and ideas? The WRA Forms Committee liked this proposal that is shown in the draft. Does the DSPS Committee agree (they previously were against leaving in a long line)?**

**NEW:** We have two separate requests from members to modify the Closing provision to provide that the closing will be: “at the place selected by (Buyer) (Seller) [STRIKE ONE] (“Buyer” if neither is stricken).” Do we wish to entertain having a strike one provision here? Would think leaving the seller as the default would be prudent since that is the immediate history. Also it was observed by a WRA Committee member that the lender’s policy must close at that title company’s location in the Milwaukee market – is that correct?

It was noted that often there are bifurcated closings at least in the Milwaukee market and it is not a problem. There are closings at two title companies. Sellers often not there.

- **Thoughts on this one? The WRA Forms Committee agreed to this modification using the Seller as the default – see proposed provision in the draft.**

**NEW: Wire Fraud Warning:** The WRA Forms Committee was in favor of considering a brief wire fraud warning on line 133. The discussion noted that this will become more common to have funds wired because title companies are beginning to reject certified or cashier’s checks for over \$25,000. Possible language – feel free to tweak:

Exercise extreme caution if wiring funds for closing. Confirm wiring instructions with an independently obtained phone number.

The object is to insert a one-line warning that will open the conversation and allow licensees to discuss whatever policies they may have while at the same time a member of the public using the form has a rudimentary alert.

- **Does this work or are there other suggestions and ideas?**

### **Definition of Business Day – Lines 187-189**

An idea based on the language in the Deadlines definition:

“Business Day” means a calendar day other than Saturday, Sunday, any legal public holiday under Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day.

- **Both Forms Committees are satisfied with this and it is now shown in the draft.**

### **Rental Weatherization – Removed from draft:**

The State budget was enacted and it provides that the rental weatherization program will sunset January 1, 2018. Thus this provision should be removed from the offer. This was agreed upon by both Forms Committees.

### **NEW: Homeowners Associations**

Should something along these lines be added to the WB-11?

■ **HOMEOWNERS ASSOCIATION FEE:** The homeowners association fee for the Property is \$\_\_\_\_\_ per \_\_\_\_\_.

■ **HOMEOWNERS ASSOCIATION RESTRICTIONS:** Seller agrees to provide Buyer with ~~complete, current and accurate copies of~~ any homeowners’ association restrictions, covenants, rules or other documents ~~including that~~ limitations or restrictions concerning ownership or use of the Property. Seller is required to provide Buyer with these materials within 10 days of acceptance of this Offer.

Note – whether the Property is part of or subject to a subdivision homeowner’s association is in the current list of Conditions Affecting the Property or Transaction and will also be on the RECR per the pending legislation (AB 812/SB 687).

The WRA Forms Committee was uncertain about this proposed addition to the offer and wondered whether there should be a contingency with regard to the restrictions?

**NEW:** the DSPS committee was opposed to this and believes it should be addressed in addenda. Any restrictions could also be associated documents on the MLS. Any restrictions/covenants should be listed on Schedule B2 of the title commitment and the buyer can ask for a copy but the intent was to create awareness earlier than that.

### **Definitions – Deadlines – Lines 190-198:**

In the offer the first sentence tells us how to count .... “by excluding the day the event occurred and counting...” When we are working with “days.” If we are working with “business days” it tells us what days to exclude but does it say to count using the same technique described in the first sentence?

■ **DEADLINES:** “Deadlines” expressed as a number of “days” from an event, such as acceptance, are calculated by excluding the day the event occurred and by counting subsequent calendar days. The deadline expires at ~~m~~Midnight on the last day. Additionally, dDeadlines expressed as a specific number of ~~B~~business ~~D~~ays are calculated in the same manner except that only Business Days are counted while other days are excluded. exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of “hours” from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at ~~m~~Midnight of that day. “Midnight” is defined as 11:59 p.m. Central Time.

➤ **Both Forms Committees are satisfied with this.**

### **Definitions – Midnight – Line 198:**

This is a term that can cause confusion and this simple provision resolves any dilemma. We can place it on its own line or leave it where it appears in the draft. This was agreed upon by the WRA Forms Committee. It is included in the draft at the end of the Deadlines definition.

### **Definitions – Fixture – Lines 202-214:**

This was updated to match the changes made in the WB-1 Residential Listing contract’s fixtures definition. The WRA proposed additional tweaks as follows:

■ **FIXTURE:** A “Fixture” is an item of property which is physically attached to or so closely associated with land, buildings or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters, water softeners and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached antennas and satellite dishes (but not the component parts); audio/visual wall mounting brackets (but not the audio/visual equipment); garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground sprinkler

systems and component parts; built-in appliances; ceiling fans; fences; [in-ground pet containment systems \(but not the collars\)](#); storage buildings on permanent foundations and docks/piers on permanent foundations.

**CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water [conditioning treatment systems](#), [home entertainment and satellite dish components](#), L.P. tanks, etc.) on lines [17-18xx-xx](#).**

The WRA Committee believed the caution should not include items that by definition are not fixtures and believed that satellite dish component parts are not fixtures.

The DSPS Forms Committee also decided that the examples shown below should be added to the caution on page at lines 25-26. It does not add any lines to the form to include the examples and has been included in the draft.

**CAUTION: Identify Fixtures that are on the Property (see lines xxx-xxx) to be excluded by Seller or which are rented ([e.g., water softeners or other water treatment systems, LP tanks, etc.](#)) and will continue to be owned by the lessor.**

➤ **Both Committees approve of this.**

### **Definitions – Good and Workmanlike Manner:**

One discussion thread was that good and workmanlike would entail: (1) permits must be pulled when required, (2) tradesmen must be properly licensed or credentialed, and (3) they must be independent. Some discussion of sellers who do some of their own work – buyers think that the sellers will cut corners. But what if the seller is a credentialed contractor? Many believe that nonetheless that the seller must hire qualified contractors.

[“Good and Workmanlike Manner” means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements.](#)

➤ **Upon second thought the WRA Forms Committee decided it was best to live with the status quo and not try to include any definition of good and workmanlike and leave it to a case by case discussion. The DSPS Committee agrees.**

### **Property Damage between Acceptance and Closing – Lines 221-245:**

Numerous potential changes are shown here but they have all been rejected.

Seller shall maintain the Property [and all personal property included in the purchase price \(see lines xx-xx\) \(hereinafter Included Property\)](#) until the earlier of closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the [Included Property](#) is damaged in an amount of not more than (five percent (5%) of the selling price)(\$[\\_\\_\\_\\_\\_](#)) [~~STRIKE AND COMPLETE AS APPLICABLE~~] (“five percent (5%) of the selling price” if none specified), Seller shall be obligated to repair the [Included Property](#) and restore it to the same condition that it was ~~in on the days of the date on line 1~~ of this Offer. (~~Seller~~) (~~Buyer~~) [~~STRIKE ONE~~] (“~~Seller~~” if ~~neither is stricken~~) shall obtain an estimate from a qualified third party to determine the amount of damage for the purposes of this section and the percentage of the selling price. No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the [Included Property](#), plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a

mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the **Included Property**.

The WRA Forms Committee discussion was interesting and revealing. It was pointed out that if the damage is less than 5% the seller doesn't have to tell anyone and can just do the repairs as the seller sees fit, providing lien waivers at closing and thus giving the buyer little opportunity to object – “squeezed” if they want to close. This could be changed if the seller was obligated to promptly notify the buyer of any damage – is that desirable? Consider, however, that would change the current state of things whereby the statutes regarding the RECR say that the seller does not have to update disclosures with regard to events or information coming after the acceptance of the offer.

In some of these cases at least the agents in the transaction may have a duty to disclose if they are aware of the damage and the damage is a material adverse fact or information suggesting one, but that may depend upon the circumstances.

**NEW:** The DSPS Committee went in a different direction and created a separate Maintenance section to address property maintenance, and reworked the Property Damage section. They added a provision requiring the seller to notify the buyer in writing regarding any property damage, even if less than 5% of the purchase price, and provide lien waivers and copies of permits no later than closing. Also the Buyer's Pre-Closing Walk-Through section was moved to appear after the Property Damage section.

**MAINTENANCE** Seller shall maintain the Property **and all personal property included in the purchase price (see lines xx-xx) (hereinafter Included Property)** until the earlier of closing or Buyer's occupancy, in materially the same condition ~~it was in at the date on Line 1 of this Offer~~**as of the date of acceptance of this Offer**, except for ordinary wear and tear.

**PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged **in an amount of** not more than 5% of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer in writing, and will be obligated to restore the Property to the same condition it was **in** at the date on Line 1 of this Offer. Seller shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than closing. If the damage shall exceed 5% of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the Property.

**BUYER'S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer shall have the right to walk through the Property **solely** to determine that there has been no significant change in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

See the WRA Forms Committee additions above in **yellow** highlights: “in an amount of” and “solely” – alternate language “ for the purpose”

➤ **Does this work or are there other suggestions and ideas?**

### **Financing Contingency overall – Lines 246-303:**

Not sure how well this works in the real world. Would love to hear input from lenders as well as members regarding what to do to make this better! If you know of lenders who could weigh in please let us know!

➤ **Name is a misnomer – should be Financing Commitment Contingency! Both Committees agreed**

**Financing Commitment Contingency:**

**Line 248 – Comment by Ken Dixon, Johnson Bank.**

The correct wording to put into this long blank is very vague based on the form. I would suggest the words “Loan type” would be more clear and useful than “(insert loan program or source)”. I think by doing so, both buyer and seller will be clear on the type (conventional, VA, FHA, ARM) of loan the borrower has made their offer contingent upon receiving. The WRA Forms Committee agreed in part, was a bit uncertain, and proposed that this say: “loan type or specific lender.” **This is shown in the draft.**

Their proposal is that is should say: This Offer is contingent upon Buyer obtaining and delivering to Seller a written \_\_\_\_\_ [loan type or specific lender, if any] first mortgage loan commitment as described below ...

➤ **The DSPS Committee added “if any” to this. WRA Committee agrees.**

**Line 249:** What should the default be? Is 60 days too long? **The WRA Forms Committee says there should not be a default.** One idea was to think about whether this deadline should be stated as 2 days before closing? Or \_\_\_ days before closing?

**NEW:** Should there instead be just a long blank line for expressing when the loan commitment must be delivered?

**The “within \_\_\_ days of acceptance” was left as is by the DSPS Committee. WRA Committee agrees.**

**NEW:** Should lines 247-249 say: This Offer is contingent upon Buyer ~~being able to obtain~~ delivering to Seller a written \_\_\_\_\_ [loan type or specific lender, if any] first mortgage loan commitment as described below, within \_\_\_\_\_ days of acceptance of this Offer.

➤ **The WRA Forms Committee further modified this proposal by removing the words “obtaining and.” Does the DSPS Committee agree?**

**Line 250-251:** Is there a problem with the language “in an amount of not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_\_\_ years?” **Both Forms Committees said no, it is fine.**

**Lines 252-256:**

Buyer acknowledges that lender’s required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums.

➤ **See the above additional language (“Buyer acknowledges that”) in tracking (and below). Does the DSPS Committee agree?**

**Lines 255-256:** Do we continue to refer to “discount points and/or loan origination fee in an amount not to exceed \_\_\_\_\_% of the loan?”

The WRA Forms Committee suggested making this just refer to discount points and delete “and/or loan origination fee” from line 255. Instead origination fees would be referred to in the Buyer’s Loan Commitment section at line 271 as shown in the draft.

➤ **The WRA Committee approves. Does the DSPS Committee agree?**

**NEW: Loan Adjustment Amount:** Lines 257-259: The DSPS Committee added a subheading and slightly modified the language here for emphasis, indicating they believe that many agents are confused about how this applies.

■ **LOAN AMOUNT ADJUSTMENT** If the purchase price under this Offer is modified, ~~the~~ **any** financed amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.

➤ **The WRA Committee and the DSPS Committee agree.**

**Lines 262-268: Is this section useful? Any modifications? The WRA Forms Committee has no changes. The DSPS Committee's modification is shown in tracking:**

**CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE xxx or xxx.**

**FIXED RATE FINANCING:** The annual rate of interest shall not exceed \_\_\_\_\_%.

**ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed \_\_\_\_\_%. The initial interest rate shall be fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_% per year, **and by not more than \_\_\_\_\_% a second time and annually thereafter.** The maximum interest rate during the mortgage term shall not exceed \_\_\_\_\_%. Monthly payments of principal and interest may be adjusted to reflect interest changes.

**The WRA Forms Committee was not in favor** of the above change highlighted in **yellow** for fear it would create additional exit doors for the buyer, and agents may not always fill this in as it is or know what to put in.

➤ **Other solutions? Does the DSPS Committee want to leave the change?**

### **Financing Contingency – Buyer's Loan Commitment – Lines 329-341:**

We hear conversation that members do not like/comply with the provision requiring the buyer's written delivery instructions. This was put in place to protect buyers from having agents or lenders deliver loan commitments that the buyers did not see and/or agree to. One suggestion is shown in the draft to allow the buyer to satisfy this requirement by simply signing the loan commitment.

**BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, **wire fees, and origination fees, and**, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line xxx. **Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. This may be signified by Buyer's signature on the loan commitment.** Buyer's written direction shall accompany the loan commitment. **Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability or if not accompanied by the buyer's written direction/instruction to deliver said commitment letter.**

Upon further reflection the **WRA Forms Committee decided it is in favor of leaving the requirements for Buyer's written delivery instructions and the delivery of those written instructions in place.**

Although this may inconvenience parties or licensees at times it was decided that it was better to protect the buyer and not allow the lender or agent to deliver a loan commitment the buyer has never read. Also with electronic communications, it is assumed that the written delivery authorization may be in email or even text as long as they can be formatted and delivered along with the loan commitment.

Note that the WRA Forms Committee added “wire fees” shown in tracking and yellow highlights above.

- Does this work or are there other suggestions and ideas? The WRA Forms Committee liked this proposal that is shown in the draft and above. Does the DSPS Committee agree?

**Lines 278-279– Comment by Ken Dixon, Johnson Bank.**

What happens if the commitment letter is not accompanied by the borrower’s written direction to deliver the C letter? Then what? Should the form state the consequences? A possible remedy in terms of clarity would be add at the end of line 278 something to the effect of “or if not accompanied by the buyer’s written direction/instruction to deliver said C letter”.

This is shown in the draft and above:

**Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability or if not accompanied by the buyer’s written direction/instruction to deliver said commitment letter.**

Also should there be a form for giving written delivery instructions?

- Does this work or are there other suggestions and ideas? The WRA Forms Committee liked this proposal that is shown in the draft. Does the DSPS Committee agree?

**NEW:** The proposal below creates a new separate subsection for Delivery of Loan Commitment and says that Buyer’s signature on the loan commitment is enough to authorize delivery but also allows for separate written instructions that would accompany the loan commitment as well.

■ **BUYER’S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line xxx.

■ **DELIVERY OF LOAN COMMITMENT:** To confirm Buyer has reviewed and approves delivery of the loan commitment, Buyer shall sign the loan commitment. If Buyer is unable to sign the loan commitment, but wishes to deliver the loan commitment to Seller, Buyer shall either deliver the loan commitment directly from Buyer, or if the loan commitment is being delivered on behalf of Buyer, Buyer shall so instruct in writing, and such written instruction shall accompany delivery of the loan commitment. Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer’s financing contingency if, after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer’s written direction shall accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.

**CAUTION:** The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. BUYER, BUYER’S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER’S AGENT WITHOUT BUYER’S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller by Buyer (even if subject to conditions) shall satisfy Buyer’s Financing Contingency.

- The WRA Forms Committee did not like the separate subsection for Delivery of Loan Commitment? Does the DSPS Committee agree?
- The WRA Forms Committee did not like the substance there (allows signature on commitment to signify approval)? Does the DSPS Committee agree?

> Does this work or are there other suggestions and ideas?

**Lines 280-283– Comment by Ken Dixon, Johnson Bank.**

**CAUTION:** The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SUBAGENTS SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER'S AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

The caution addresses commitment letters that may have conditions the buyer has not yet satisfied are the true risk in this entire process. That said, I don't know how this situation will ever change as every commitment letter is "subject to" something. Title insurance is on every commitment letter as an example. If the lender is running out of time, sometimes an appraisal can be the "subject to" item. While that's a much bigger deal, it's still a condition of the commitment letter and technically the borrower is releasing their financing contingency without knowing if the value is going to come in high enough. Again, I don't know how we can change that.

**Note:** Perhaps a training issue so that licensees explain this to the parties.

**Note:** Note the modifications above in yellow highlights to the caution language.

> Does this work or are there other suggestions and ideas?

**Notice of unacceptability -- Comments by Ken Dixon, Johnson Bank.**

Lines 278 and 283 use the term "Unacceptability" without a definition of what that word means. If it's supposed to mean that the terms offered don't match the listed terms in the above lines, then the form should state that along with the fact that the borrower is rejecting the commitment that is being offered by the lender. And then what? Does that automatically void the offer? What happens now if a notice of unacceptability is tendered? Again, the form does not spell out those consequences.

Possible language follows. Note that the offer does not equate a notice of unacceptability with evidence of unavailability – that section (Financing Unavailability) puts the emphasis on rejection letters but that is not the only way to show what the buyer described is not available.

If a loan commitment does not meet the terms stated in lines xxx-xxx and thus is not acceptable to Buyer, Buyer shall deliver the loan commitment to Seller along with a notice of Unacceptability stating Buyer rejects the loan commitment because it does not satisfy the terms of the Financing Commitment Contingency. Said loan commitment and Notice of Unacceptability shall constitute evidence of financing unavailability per lines xxx-xxx.

-- or --

If a loan commitment is not acceptable to Buyer because it does not meet the terms stated in lines xxx-xxx, Buyer shall deliver the loan commitment to Seller along with a Notice of Unacceptability stating the loan commitment is unacceptable because it does not satisfy the terms of the Financing Commitment Contingency. Delivery of said loan commitment and Notice of Unacceptability to Seller provides evidence of financing unavailability per lines xxx-xxx.

**The WRA Forms Committee** discussed what a notice of unacceptability means, for instance the buyer referenced 10% down and the lender will only offer 20% down, or the lender says must fix the roof in order to provide the described financing. They concluded it is a difficult concept to define and preferred to leave as is.

**NEW suggestion:** “Loan Unacceptability must be based on Buyer using reasonable attempts/effort to obtain the terms stated in this Financing Commitment Contingency, but obtainable terms are significantly different and adverse to Buyer.”

➤ **Does this work or are there other suggestions and ideas?**

### **Financing Contingency – Seller Termination Rights – Lines 284-289:**

Here we find one instance of the actual receipt standard. An addition was made to require delivery of the buyer written delivery directions.

■ **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment; Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan commitment **and Buyer's written delivery directions.**

➤ **Does this work or are there other suggestions and ideas?**

Another addition in the draft gives a proposed idea of a right to cure for a buyer and agents who have simply forgot to deliver the loan commitment to the seller -- so they won't get trapped.

In the event Seller delivers to Buyer a written notice of termination, Buyer will have the right to cure the breach by delivering the written loan commitment and delivery directions to seller within \_\_\_ hours (“24” if left blank) of Seller's delivery of the notice of termination. **Seller has no ability to reject a loan commitment unless Seller has added standards to this contingency that are not met.**

The WRA Forms Committee said to keep the sentence highlighted in yellow, but was not fond of the right to cure for the forgetful buyer.

■ **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment; Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's **Actual Receipt** of a copy of Buyer's written loan commitment **and Buyer's written delivery directions.** ~~In the event Seller delivers to Buyer a written notice of termination, Buyer will have the right to cure the breach by delivering the written loan commitment and delivery directions to seller within \_\_\_ hours (“24” if left blank) of Seller's delivery of the notice of termination.~~ **Seller has no ability to reject a loan commitment unless Seller has added standards to this contingency that are not met.**

➤ **Does this work or are there other suggestions and ideas?**

**NEW:** The proposal below is made to ensure that the only remedy for the buyer's failure to meet the financing contingency deadline is seller termination. The thought is that being unable to send a loan commitment by the deadline should not be treated as a “breach”. If the buyer is acting in “bad faith,” that would itself be a separate breach (failure to attempt in good faith to satisfy contingencies), but the timing itself is part of the condition not a point of contract breach.

Note: not sure why the existing language would be seen as creating grounds for a breach – where one could possibly sue for damages, etc. – since this is part of a contingency and what it takes to satisfy it and not a per se contract requirement. Would a seller want to and be able to sue a buyer because the buyer is not able to satisfy the contingency? Is this a problem being experienced by parties in transactions?

■ **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment, **Seller's remedy under this provision is** to terminate this Offer by delivering a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan commitment, **signed by Buyer or accompanied with written instruction, per above.**

➤ **Does this work or are there other suggestions and ideas?**

**Financing Unavailability – Lines 290-296:**

There are two issues here: what happens if the buyer is unable to obtain the described or other financing – and – the “hidden” seller financing option. The first issue perhaps needs more clarity and the second is unpopular with many so it should perhaps be unhidden, a caution added, become an optional provision or deleted.

Among those opposed to the current seller financing provisions, there is a concern about creating a contractual obligation to provide one’s social security number to a seller who may not be able to make the loan.

- ◆ Does this need more definite timelines for proof of unavailability?
- ◆ As stated above, a loan commitment that does not meet Buyer’s terms should be evidence of unavailability so should that be added?
- ◆ Do we need more specific language as to what is needed to establish unavailability as the current provision causes confusion?
- ◆ Should there be a specific number of pieces of evidence that is required to show unavailability or should the parties agree to that? Or is it too finessed an issue to set firm standards?
- ◆ Should we leave the 10-day timeline which may unreasonably and unnecessarily extend the time before the offer is concluded?

See some proposed ideas below:

■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall no later than the deadline on line xxx promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s), unacceptable loan commitment(s) per lines xxx-xxx, or other evidence of unavailability. Within 2 days of the deadline on line xxx Seller shall deliver written notice to Buyer indicating whether or not Seller will consider providing Seller mortgage financing; if not this Offer shall be null and void. Unless a specific loan source is named in this Offer, if Seller delivers notice that Seller will consider Seller financing Seller shall then have 10 days after the deadline on line xxx to deliver to Buyer written notice of Seller's decision to finance-provide or not provide mortgage financing for this transaction on the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given notice indicates Seller elects to not provide Seller financing, this Offer shall be null and void. Buyer authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

➤ **Does this work or are there other suggestions and ideas?**

Another variation showing the separation of the Seller Financing into a separate subsection and making it optional:

■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall no later than the deadline on line xxx promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s), unacceptable loan commitment(s) per lines xxx-xxx, or other evidence of unavailability. This Offer shall then be null and void unless the Seller Financing provision at lines xxx-xxx has been selected.

SELLER FINANCING: Within 2 days of the deadline on line xxx Seller shall deliver written notice to Buyer indicating whether or not Seller will consider providing Seller mortgage financing; if not this Offer shall be null and void. Unless a specific loan source is named in this Offer, if Seller delivers notice that Seller will consider Seller financing Seller shall then have 10 days after the deadline on line xxx to deliver to Buyer written notice of Seller's decision to ~~finance~~ provide or not provide mortgage financing for this transaction on the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's ~~notice is not timely given~~ notice indicates Seller elects to not provide Seller financing, this Offer shall be null and void. Buyer authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

➤ **Does this work or are there other suggestions and ideas?**

### **If This Offer Is Not Contingent On Financing – Lines 297-303:**

IF THIS OFFER IS NOT CONTINGENT ON FINANCING: Within 7 days of acceptance, a financial institution or third party in control of Buyer's funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close. If such written verification is not provided, Seller has the right to terminate this Offer by delivering written notice to Buyer. Buyer may or may not obtain mortgage financing but does not need the protection of a financing contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.

Is there anything that needs to be changed here? There have been a couple of comments that everyone does not understand what written verification is required: buyers submitting, for example, a pre-approval. It was originally believed that the verification of funds would be from a bank, trust fund, investment account, etc. Does this need clarification?

GMAR Addendum A has a provision for the Waiver of Financing Contingency that states: "If Buyer waives the financing contingency making this a cash offer and, within \_\_\_\_ day(s) ("7" if left blank) of the delivery of the notice of the waiver of financing contingency, Buyer delivers written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of the verification, sufficient funds to close this transaction which are not contingent on the sale of Buyer's property. Seller agrees to waive Seller's rights under the financing contingency. **Delivery of a loan commitment is considered written verification of sufficient funds to close if loan commitment is not contingent on the sale of Buyer's property and Buyer provides written verification confirming sufficient funds for the amount by which the sales price exceeds the amount of the loan commitment.**"

Would the language in yellow be another acceptable way to verify funds? Or would that be confusing?

➤ **Does this work as is or should it be modified? Other suggestions and ideas?**

### **Appraisal Contingency – Lines 304-317:**

Clarification of what is meant by the date of the Offer, a 45- day default timeframe, and right to cure for the seller to agree to amend the offer to change the purchase price. See the draft.

Another possibility from the WRA Forms Committee – alternative to some of the language in tracking in the draft:

In the event the appraisal indicates a value less than the agreed upon purchase price Buyer shall deliver to Seller a copy of the appraisal and an amendment to change the purchase price to an amount not less than the appraised value. Said amendment shall include no other provisions and shall allow Seller at least one day to accomplish binding acceptance.

OR

In the event said appraisal indicates a value less than the purchase price Buyer agrees to not send the termination provided for in this contingency prior to allowing the Seller two days to amend the offer as follows: Buyer to provide Seller a copy of the appraisal and a Buyer-signed amendment which reduces the purchase price to a price not less than the appraised value and includes no other terms or conditions.

➤ **Does this work or are there other suggestions and ideas?**

### **Request for Indication If Property Buyer's Primary Residence**

Burnet Title has asked if a line item could be added to the offer to purchase addressing if the property will be the Buyer's "Primary Residence". There are a few reasons for this:

1. State Transfer Form. When filling out the form, we have to check a box if this will be the primary residence of the buyer. This determines if the Lottery Credit is applied to the tax bill or not. Also, we have to select what address to mail the tax bill to, and if it's their primary residence, we already have that answer.
2. Some municipalities have forms that the buyer must fill out at closing if there will not occupy the property as their primary residency. These are forms that need to be prepared ahead of time and at the closing table. Sometimes there are fees associated with these forms, and we must charge them on the Alta Statement.

➤ **Does this work or are there other suggestions and ideas?**

### **Request for FIRPTA Provision**

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. Persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold 15% of the amount realized on the disposition (special rules for foreign corporations). <https://www.irs.gov/individuals/international-taxpayers/firpta-withholding>

FEDERAL TAX REQUIREMENT: If Seller is a "foreign person", as defined by applicable law, or if Seller fails to deliver an affidavit that Seller is not a "foreign person", then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax form.

➤ **Does this work or are there other suggestions and ideas?**

### **Testing Contingency – Lines 350-372:**

This is one version of a general testing contingency where the substances to be tested for are written in.

### **Radon Testing and Testing Contingency combination – Lines 373-401:**

Another option. We can pick and choose and modify as needed. There are other variations in addenda too. Think about what contingencies are wanted and then what language and standards. This one has a radon

testing contingency and a general testing contingency that share the same section regarding satisfaction and the right to cure.

***Interconnection between home inspection and testing- one suggestion***

There was a Legal Hottip that suggested that if the inspection report recommends tests – similar to the way that it sometimes recommends further inspections – and if there is a testing contingency in the offer that refers to the inspection report by saying that tests recommended by the home inspection report are included in the testing contingency – that this could work. If there is a testing contingency in the offer the testing contingency could be completed, for example, as shown below.

**TESTING CONTINGENCY:** This Offer is contingent upon (Buyer obtaining)(Seller providing) [STRIKE ONE] (“Buyer obtaining” if neither is stricken) a current written report from a qualified independent expert(s) documenting the results of the following test(s) conducted pursuant to applicable government or industry protocols and standards [indicate substances or compounds to be tested, e.g., asbestos (see <http://www2.epa.gov/asbestos/protect-your-family>), etc.]: substance(s) recommended for testing in the inspection report provided per lines xxx-xxx of the Offer, no later than \_\_\_\_ days (after acceptance)(prior to closing) STRIKE ONE (“prior to closing” if neither is stricken), at (Buyer's) (Seller's) STRIKE ONE (“Buyer’s” if neither is stricken) expense. Specify any protocols, testing contractors, labs, standards/levels constituting a Defect, financial limits, acceptable repair methodology, etc.: \_\_\_\_\_. Seller (shall)(shall not) STRIKE ONE (“shall” if neither is stricken) have the right to cure. See lines 62-71 regarding the Right to Cure. With regard to testing recommended in the inspection report per lines xxx-xxx of this Offer, the deadline for performance of the testing shall be extended to the deadline per line xxx of that contingency (deadline for follow-up inspections).

Then the Inspection Contingency could be modified by adding:

**INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 395-409). This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property which discloses no Defects. This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of \_\_\_\_\_ (list any Property component(s) to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided they occur prior to the deadline specified at line xxx. Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party. Buyer may have follow-up testing recommended in a written report resulting from an authorized inspection, provided there is a testing contingency in this Offer, any testing is in accordance with the testing contingency and any testing occurs prior to the deadline specified at line xxx.

***Another consideration for timeframes when there is testing recommended by the inspection report might be to add this:***

**INSPECTION AND TESTING DEADLINE EXTENSIONS:** The Parties agree to extend the deadlines for any Inspection Contingency and any Testing Contingency in this Offer of any follow-up inspections or testing recommended in a timely written inspection or testing report. The extension shall apply only to follow-up inspections or testing.

***Inspection Contingency Right to Cure suggestion:***

■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by: ~~(4) delivering written notice to Buyer within 7 days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects by either having the Defects cured in a good and workmanlike manner; at Seller's expense no later than 3 days prior to closing or and (32) delivering to Buyer a written report detailing the work done at least 3 days prior to closing, giving Buyer a credit at closing so Buyer, or a contractor or vendor of Buyer's choice, can cure the Defects in a good and workmanlike manner.~~ This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

### **Attorney Approval Contingency – Lines 402-416:**

There is more than one version of this available should this be desired. This one attempts to try to keep things on an objective basis as much as possible. May be attacked as subjective if it is too loose and doesn't have any standards.

### **Closing of Buyer's Property Contingency – Lines 417-422:**

This was separated from the bump clause. It is shown with a default for the time frame. It also looks to set a consequence if there is no closing by the deadline. Does it mean the seller can terminate the offer? Does it mean simply that the seller cannot enforce the offer against the buyer because the contingency was not fulfilled but the buyer may still choose to go forward (the result of the current language)? There also is a statement that the buyer may unilaterally waive the contingency as this has been a point of discussion for some. The draft shows:

**CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_, no later than \_\_\_\_\_ (“95 days after acceptance if none stated). If Buyer does not deliver a copy of the deed from the closing of the sale of Buyer's property to Seller by the stated deadline then [Seller may deliver a notice of termination and this Offer shall be null and void??] [this Offer shall not be enforceable against the Buyer who may proceed with this Offer at Buyer's discretion??] [Another consequence??] Buyer may unilaterally waive this contingency.

➤ **Does this work or are there other suggestions and ideas?**

Another proposal:

**CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_, no later than \_\_\_\_\_. Buyer may proceed to closing without satisfaction of this contingency, and may waive this contingency unilaterally, in writing, at any time. But if this contingency is not otherwise timely satisfied, Seller may deliver a notice of termination, rendering this Offer null and void, except that Buyer may elect to proceed with this Offer if Buyer delivers to Seller a written notice waiving this contingency within \_\_\_\_\_ hours after delivery of Seller's notice.

➤ **Does this work or are there other suggestions and ideas?**

### **Bump Clause – Lines 423-433:**

This shows what this would look like as a separate provision. It allows for a bump that requires removal of various provisions or the meeting of other conditions. It has a default for the timeframe, involves the

debate over whether or not actual receipt is a good thing and adds a statement that the seller may unilaterally waive the bump clause provision – for better or for worst – the group may look at this and decide.

**BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance that another offer has been accepted. If Buyer does not deliver to Seller: **CHECK AND COMPLETE AS APPLICABLE**

- Written waiver of Closing of Buyer's Property Contingency
- Written waiver of Financing Contingency
- Written waiver/Proof of bridge loan financing
- Proof of ability to close
- \_\_\_\_\_ (other – specify)

**[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, OR PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)]** within \_\_\_\_ hours ("72" if left blank) of Buyer's Actual Receipt/delivery?? (the debate resurfaces, concerns either way!) of said notice, this Offer shall be null and void. Seller may unilaterally waive this Bump clause provision.

Another way to state this:

**BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written notice waiving and/or satisfying all items specified below, within \_\_\_\_ hours [72 hours if left blank] of Buyer's Actual Receipt of Seller's notice, this Offer shall be null and void. **CHECK AND COMPLETE AS APPLICABLE [INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL CONTINGENCIES, OR PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)]**

- Written waiver of Closing of Buyer's Property Contingency
- Written waiver of Financing Contingency
- Written waiver of \_\_\_\_\_ (other – specify)
- \_\_\_\_\_ (other – specify)
- \_\_\_\_\_ (other – specify)

Seller may unilaterally waive this Bump Clause provision.

➤ **Which works best or are there other suggestions and ideas?**

Proposal regarding the area that addresses the number of hours that a buyer is given to address the “bump” from receipt of a Notice is changed: From: “within \_\_\_\_\_ hours of Buyers Actual....” To: “within \_\_\_\_\_ hours (24 if nothing is written in) of Buyers Actual...”

Another variation: within \_\_\_\_ hours ("72" if left blank) of Buyer's Actual Receipt OR SEVEN DAYS AFTER DELIVERY of said notice.... whichever occurs first ...

➤ **Are any of these preferred or are there other suggestions and ideas?**

**Secondary Offer – Lines 434-439:**

A default time frame was added.

**SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior to any deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice that this Offer is primary. Buyer may not deliver

notice of withdrawal earlier than \_\_\_\_\_ days ("5" if left blank) after acceptance of this Offer. All other Offer deadlines which are run from acceptance shall run from the time this Offer becomes primary.

A proposal for an addition:

**SECONDARY WITHDRAWAL LOCK-IN:** If this Offer is a Secondary Offer, it is also agreed that if Seller elects to send a "Bump" Notice to the Primary Buyer, Seller may notify Buyer in writing when Seller delivers a "Bump" Notice to the Primary Buyer, and Buyer agrees that upon such notification from Seller Buyer's right to withdraw under lines xxx is removed from this Offer. Note: Notification under this provision does not make Buyer's offer primary. Buyer's right to withdraw under lines xxx is reinstated if the Primary Buyer waives and/or satisfies the conditions permitting Primary Buyer to proceed. Seller agrees to promptly notify Buyer in writing if the Primary Buyer is proceeding or if Seller is choosing to elevate Buyer to a primary offer.

➤ **Does this work or are there other suggestions and ideas?**

### **Title Evidence section – Lines 447-485:**

First of all, the language highlighted in yellow has been referred to the smart title attorneys with the Wisconsin Land Title Association and they will study this and give us a recommendation so stay tuned. At line 446 the idea is to give a prompt with some examples of what one would write in on the blank lines. Ideas for examples are most welcome. At line 455 it makes clear that the buyer pays for the cost of recording the deed. This may need further clarification as to whether this means just the recording fee or whether it includes the transfer fee – meant it to be just the recording fee while the seller would pay the transfer fee. At lines 474-475 the provision shifts the timing for obtaining the title insurance commitment to the beginning of the transaction.

### **TITLE EVIDENCE**

■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Offer [this issue has been referred to the Wisconsin Land title Association and all of their smart attorneys and they will get back to us with a recommendation], general taxes levied in the year of closing and \_\_\_\_\_

\_\_\_\_\_ [Insert other allowable exceptions from title, if any (e.g., xxxxxx, yyyyyyyy, zzzzzzzz, etc.) which constitutes merchantable title for purposes of this transaction. Seller shall complete and execute the documents necessary to record the conveyance at Seller's cost and pay the Wisconsin Real Estate Transfer Fee.

A representative of Chicago Title mentioned a potential problem she has run across when a certain attorney in town drafts a deed and includes a "reference" to the Condition Report, with it never to be fully explained going forward, but will be there recorded on record forever. The language is the last part "...present uses of the Property in violation of the foregoing disclosed in the Seller's Real Estate Condition Report and in this Offer..."

The Wisconsin Land Title Association has looked at this issue and does not recommend any modifications to this language.

■ **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer's attorney or Buyer no later than \_\_\_\_\_ days ("15" if left blank) (after acceptance)(prior to closing) [STRIKE ONE] ("after acceptance" if neither is stricken), ~~losing,~~ showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be

merchantable per lines ~~326-335~~xxx-xxx, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title ~~by the time set for closing~~within 5 days of delivery to Buyer or Buyer's attorney. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

The above looks to provide a choice of timing for delivery of the title commitment. It also looks to place a deadline on the buyer's objections to title.

➤ **Does this work or are there other suggestions and ideas?**

### **Special Assessments/Other Expenses: Lines 486-489:**

The idea here is to define what "levied" means.

■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior to the date stated on line 1 shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer. "Levied" means the local municipal governing body has passed and published a final resolution describing the planned improvements and the assessment of benefits.

➤ **Does this work or are there other suggestions and ideas?**

An alternative provision:

■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Seller has disclosed the following special assessment(s) that has been published by the local municipal governing body and sent to all interested persons: \_\_\_\_\_

Buyer has contacted city, county, and other local municipal governing bodies with the power to levy special assessments on the property and is aware of the following current or pending special assessments: \_\_\_\_\_

(Buyer)(Seller) [STRIKE ONE] ("Seller" if neither is stricken) shall pay for current or pending special assessments. If Seller is to pay for current or pending special assessments, Seller shall pay prior to closing. If Buyer is to pay for current or pending special assessments, Buyer may elect to pay in a lump sum when final bills are distributed or on an installment bases if permitted by the local municipal governing body responsible for the special assessment.

➤ **Does this work or are there other suggestions and ideas?**

### **Earnest Money Disbursement – Lines 503-512:**

A suggestion:

If this offer does not close DUE TO A CONTINGENCY THAT HAS NOT BEEN SATISFIED, THE EARNEST MONEY SHALL BE RETURNED TO THE PARTY WHOSE CONTINGENCY HAS NOT BEEN SATISFIED WITHIN 10 DAYS OF NOTICE OF TERMINATION IF THE OTHER PARTY DOES NOT OBJECT. IF FOR ANY OTHER REASON THIS OFFER does not close, the earnest money shall be returned according to the written disbursement agreement ....

How to tell who the contingency is for?

What if no notice of termination? Inspection?

Language attempts to incorporate the standards from the first page with respect to how the earnest money gets to the listing firm and also takes account of the fact that another holder of the earnest money may be

named on line 12 of the offer. At line 512 the money that may be spent for an attorney is increased to \$750 – should it be more?

Also can a firm that has not initiated a small claims interpleader action or has not retained an attorney for a legal opinion still use the \$750 for the legal services involved if named in a small claims action between the parties?

### **Inspection Contingency – Lines 537-560:**

Note the insertion of the word “independent” on line 599 and a default timeframe of 20 days on line 609. There also is a clarification to the time frame on line 618 – at least 3 days prior to closing.

**Suggestion:** should the timeframe for the Seller’s response to the notice of defects be less than 10 days? The draft at line 616 says 7 days. Should it be shorter, for instance, 5 days? Or should there be a blank line for the number of days so the parties may decide for themselves?

The draft also shows in tracking a requirement that the inspection must be performed and the inspection reports used to trigger the notice of defects must be new reports dated after the date the offer was accepted. This is intended to disallow the use of prior inspection reports for this purpose. There have been some buyers trying to do this.

### **General discussion regarding Inspection Contingency:**

Some WRA Forms Committee members talked about a system where there is a notice of defects and then a curative amendment that specifies the details of the cure. If the seller doesn’t agree then it is up to the buyer to decide whether the offer ends. This flips or reverses the decision making power and puts the buyer in power while the seller has more power under the existing offer. The current inspection contingency is a deterrent to buyers to give a notice of defects in the minds of some WRA Forms Committee members.

### **Earnest Money Receipt – Lines 576-577:**

Does this configuration make more sense? Other modifications?

### **Wisconsin Marital Property Law Disclosure**

Persons in the process of divorce, who are buying a personal residence for themselves without their partner's participation, may not be able to honor their commitment in the end. The Seller has no way of knowing what the buyer is legally able to do. A statement of representation or a statement to provide sufficient proof a legally binding agreement to permit the person to buy without interference from the soon to be ex-spouse would be helpful. Thus a request has been made of the parties to complete a disclosure just above the signature lines at the end of the offer:

**Wisconsin Marital Property Law Disclosure: I am the Buyer/Seller [STRIKE ONE]. By signing below, I represent that I, along with any other person named as a Buyer/Seller [STRIKE ONE] on this Offer, have the sole authority to commit to this transaction without the approval of any other person or entity. CAUTION: In the event there is more than one Owner of this property, or the property is or will be marital property, the transaction may not be binding without all signatures. Persons who are in the process of divorce should provide evidence of their ability to complete this sale without approval, cooperation, or any other agreement with any other person's.**

**Observation:** Buyers do not need to have both spouses sign an offer as buyers and sellers may not either depending upon management and control powers. Marital property law kicks in with the sellers. The problem may be that a buyer who is getting divorced may have issues purchasing before the divorce is

final because the property purchased might become categorized as marital instead of that buyer's individual property. The thought behind the last sentence is appropriate for that circumstance.

OfferWB-11RevisionDSPS5-2-18

**WB-11 RESIDENTIAL OFFER TO PURCHASE**

1 **LICENSEE DRAFTING THIS OFFER ON** \_\_\_\_\_ **[DATE] IS (AGENT OF BUYER)**  
2 **(AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) ~~STRIKE THOSE NOT APPLICABLE~~**

3 **GENERAL PROVISIONS** The Buyer, \_\_\_\_\_  
4 \_\_\_\_\_, offers to purchase the Property known as [Street Address] \_\_\_\_\_  
5 \_\_\_\_\_ in the \_\_\_\_\_  
6 of \_\_\_\_\_, County of \_\_\_\_\_ Wisconsin (insert additional  
7 description, if any, at lines 165-172 or 435-442 or attach as an addendum per line 434), on the following terms:

8 ■ **PURCHASE PRICE:** \_\_\_\_\_  
9 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

10 ■ **EARNEST MONEY** of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_  
11 will be mailed, or commercially or personally delivered within \_\_\_\_\_ days of acceptance to listing broker or  
12 \_\_\_\_\_.

13 ■ **THE BALANCE OF PURCHASE PRICE** will be paid in cash or equivalent at closing unless otherwise provided below.

14 ■ **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price the Property, all Fixtures on the Property on  
15 the date of this Offer not excluded at lines 17-18, and the following additional items: \_\_\_\_\_  
16 \_\_\_\_\_.

17 ■ **NOT INCLUDED IN PURCHASE PRICE:** \_\_\_\_\_  
18 \_\_\_\_\_.

19 **CAUTION: Identify Fixtures that are on the Property (see lines 185-193) to be excluded by Seller or which are rented**  
20 **and will continue to be owned by the lessor.**

21 **NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are**  
22 **included/excluded.**

23 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical  
24 copies of the Offer.

25 **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines**  
26 **running from acceptance provide adequate time for both binding acceptance and performance.**

27 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on  
28 or before \_\_\_\_\_. Seller may keep the Property on the  
29 market and accept secondary offers after binding acceptance of this Offer.

30 **CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.**

31 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (  ) ARE PART OF THIS  
32 OFFER ONLY IF THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A"  
33 OR ARE LEFT BLANK.

34 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and  
35 written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 36-54.

36 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if  
37 named at line 38 or 39.

38 Seller's recipient for delivery (optional): \_\_\_\_\_

39 Buyer's recipient for delivery (optional): \_\_\_\_\_

40  (2) **Fax:** fax transmission of the document or written notice to the following telephone number:

41 Seller: ( \_\_\_\_\_ ) \_\_\_\_\_ Buyer: ( \_\_\_\_\_ ) \_\_\_\_\_

42  (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a  
43 commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39, for  
44 delivery to the Party's delivery address at line 47 or 48.

45  (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party,  
46 or to the Party's recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at line 47 or 48.

47 Delivery address for Seller: \_\_\_\_\_

48 Delivery address for Buyer: \_\_\_\_\_

49  (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line  
50 53 or 54. If this is a consumer transaction where the property being purchased or the sale proceeds are used primarily for  
51 personal, family or household purposes, each consumer providing an e-mail address below has first consented electronically  
52 to the use of electronic documents, e-mail delivery and electronic signatures in the transaction, as required by federal law.

53 E-Mail address for Seller (optional): \_\_\_\_\_

54 E-Mail address for Buyer (optional): \_\_\_\_\_

55 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller  
56 constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

57 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this  
 58 Offer at lines 165-172 or 435-442 or in an addendum attached per line 434. At time of Buyer's occupancy, Property shall be in  
 59 broom swept condition and free of all debris and personal property except for personal property belonging to current tenants,  
 60 or that sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

61 **DEFINITIONS**

62 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or  
 63 written notice physically in the Party's possession, regardless of the method of delivery.

64 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions Affecting the Property or Transaction" are  
 65 defined to include:

- 66 a. Defects in the roof.
- 67 b. Defects in the electrical system.
- 68 c. Defects in part of the plumbing system (including the water heater, water softener and swimming pool) that is included in  
 69 the sale.
- 70 d. Defects in the heating and air conditioning system (including the air filters and humidifiers).
- 71 e. Defects in the well, including unsafe well water.
- 72 f. Property is served by a joint well.
- 73 g. Defects in the septic system or other sanitary disposal system.
- 74 h. Underground or aboveground fuel storage tanks on or previously located on the Property. (If "yes", the owner, by law,  
 75 may have to register the tanks with the Department of Commerce at P.O. Box 7970, Madison, Wisconsin, 53707, whether  
 76 the tanks are in use or not. Regulations of the Department of Commerce may require the closure or removal of unused  
 77 tanks.)
- 78 i. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased).
- 79 j. Defects in the basement or foundation (including cracks, seepage and bulges).
- 80 k. Property is located in a floodplain, wetland or shoreland zoning area.
- 81 l. Defects in the structure of the Property.
- 82 m. Defects in mechanical equipment included in the sale either as Fixtures or personal property.
- 83 n. Boundary or lot line disputes, encroachments or encumbrances (including a joint driveway).
- 84 o. Defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, lead in paint,  
 85 lead in soil, lead in water supplies or plumbing system, or other potentially hazardous or toxic substances on the Property.
- 86 **NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential**  
 87 **properties built before 1978.**
- 88 p. Presence of asbestos or asbestos-containing materials on the Property.
- 89 q. Defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances  
 90 on neighboring properties.
- 91 r. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal or other insect  
 92 infestations.
- 93 s. Defects in a wood burning stove or fireplace or Defects caused by a fire in a stove or fireplace or elsewhere on the  
 94 Property.
- 95 t. Remodeling affecting the Property's structure or mechanical systems or additions to Property during Seller's ownership  
 96 without required permits.
- 97 u. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition.
- 98 v. Notice of property tax increases, other than normal annual increases, or pending property reassessment.
- 99 w. Remodeling that may increase Property's assessed value.
- 100 x. Proposed or pending special assessments.
- 101 y. Property is located within a special purpose district, such as a drainage district, that has the authority to impose  
 102 assessments against the real property located within the district.
- 103 z. Proposed construction of a public project that may affect the use of the Property.
- 104 aa. Subdivision homeowners' associations, common areas co-owned with others, zoning violations or nonconforming uses,  
 105 rights-of-way, easements or another use of a part of the Property by non-owners, other than recorded utility easements.
- 106 bb. Structure on the Property is designated as an historic building or part of the Property is in an historic district.
- 107 cc. Any land division involving the Property for which required state or local permits had not been obtained.
- 108 dd. Violation of state or local smoke and carbon monoxide detector laws.
- 109 ee. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the  
 110 Property.
- 111 ff. The Property is subject to a mitigation plan required by Wisconsin Department of Natural Resources (DNR) rules related  
 112 to county shoreland zoning ordinances that obligates the owner to establish or maintain certain measures related to  
 113 shoreland conditions, enforceable by the county.
- 114 gg. Other Defects affecting the Property.

115 **(Definitions Continued on page 4)**

116 **CLOSING** This transaction is to be closed no later than \_\_\_\_\_  
117 \_\_\_\_\_ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

118 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:  
119 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners association  
120 assessments, fuel and \_\_\_\_\_.

121 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**

122 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

123 Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

124  The net general real estate taxes for the preceding year, or the current year if available (Net general real estate  
125 taxes are defined as general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE  
126 APPLIES IF NO BOX IS CHECKED)

127  Current assessment times current mill rate (current means as of the date of closing)

128  Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior  
129 year, or current year if known, multiplied by current mill rate (current means as of the date of closing)

130  \_\_\_\_\_

131 **CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be**  
132 **substantially different than the amount used for proration especially in transactions involving new construction,**  
133 **extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor**  
134 **regarding possible tax changes.**

135  Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on  
136 the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5  
137 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall  
138 re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation  
139 and is the responsibility of the Parties to complete, not the responsibility of the real estate brokers in this transaction.

140 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights  
141 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the  
142 (written) (oral) ~~STRIKE ONE~~ lease(s), if any, are \_\_\_\_\_  
143 \_\_\_\_\_.

144 **RENTAL WEATHERIZATION** This transaction (is) (is not) ~~STRIKE ONE~~ exempt from Wisconsin Rental Weatherization  
145 Standards (Wis. Admin. Code Ch. Comm 67). If not exempt, (Buyer) (Seller) ~~STRIKE ONE~~ ("Buyer" if neither is stricken) shall  
146 be responsible for compliance, including all costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for  
147 compliance, Seller shall provide a Certificate of Compliance at closing.

148 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property which includes 1-4 dwelling units to  
149 provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been  
150 inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example,  
151 personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The  
152 law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the  
153 contract of sale . . . , to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does  
154 not receive a report within the 10 days may, within 2 business days after the end of that 10 day period, rescind the contract of  
155 sale . . . by delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission  
156 rights if a Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is  
157 submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding  
158 rescission rights.

159 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no  
160 notice or knowledge of Conditions Affecting the Property or Transaction (lines 64-114) other than those identified in Seller's  
161 Real Estate Condition Report dated \_\_\_\_\_, which was received by Buyer prior to Buyer  
162 signing this Offer and which is made a part of this Offer by reference ~~COMPLETE DATE OR STRIKE AS APPLICABLE~~ and

163 \_\_\_\_\_  
164 ~~INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT~~

165 **ADDITIONAL PROVISIONS/CONTINGENCIES**  
166 \_\_\_\_\_  
167 \_\_\_\_\_  
168 \_\_\_\_\_  
169 \_\_\_\_\_  
170 \_\_\_\_\_  
171 \_\_\_\_\_  
172 \_\_\_\_\_

173 **DEFINITIONS CONTINUED FROM PAGE 2**

174 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding  
 175 the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day.  
 176 Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under  
 177 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive  
 178 registered mail or make regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the  
 179 occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours  
 180 per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as  
 181 closing, expire at midnight of that day.

182 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would  
 183 significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would  
 184 significantly shorten or adversely affect the expected normal life of the premises.

185 ■ **FIXTURE:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or  
 186 improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily  
 187 removable without damage to the premises, items specifically adapted to the premises and items customarily treated as  
 188 fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric  
 189 lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached  
 190 equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached  
 191 antennas; garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-  
 192 ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent  
 193 foundations and docks/piers on permanent foundations.

194 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water  
 195 conditioning systems, home entertainment and satellite dish components, L.P. tanks, etc.) on lines 17-18.**

196 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-7.

197 **PROPERTY DIMENSIONS AND SURVEYS** Buyer acknowledges that any land, building or room dimensions, or total  
 198 acreage or building square footage figures, provided to Buyer by Seller or by a broker, may be approximate because of  
 199 rounding, formulas used or other reasons, unless verified by survey or other means.

200 **CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land, building  
 201 or room dimensions, if material.**

202 **BUYER'S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or  
 203 Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change  
 204 in the condition of the Property, except for ordinary wear and tear and changes approved by Buyer, and that any defects  
 205 Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

206 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** Seller shall maintain the Property until the earlier of  
 207 closing or occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary  
 208 wear and tear. If, prior to closing, the Property is damaged in an amount of not more than five percent (5%) of the selling price,  
 209 Seller shall be obligated to repair the Property and restore it to the same condition that it was on the day of this Offer. No later  
 210 than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. If the damage shall exceed  
 211 such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer.  
 212 Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any,  
 213 relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on  
 214 such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall  
 215 be held in trust for the sole purpose of restoring the Property.

**IF LINE 217 IS NOT MARKED OR IS MARKED N/A LINES 257-263 APPLY.**

216  
217  **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written \_\_\_\_\_  
218 \_\_\_\_\_ [INSERT LOAN PROGRAM OR SOURCE] first mortgage  
219 loan commitment as described below, within \_\_\_\_\_ days of acceptance of this Offer. The financing selected shall be in an  
220 amount of not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_\_\_ years, amortized over not less than  
221 \_\_\_\_\_ years. Initial monthly payments of principal and interest shall not exceed \$ \_\_\_\_\_. Monthly payments may  
222 also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance  
223 premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination  
224 fee in an amount not to exceed \_\_\_\_\_% of the loan. If the purchase price under this Offer is modified, the financed  
225 amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and  
226 the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.

227 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 228 or 229.**

- 228  **FIXED RATE FINANCING:** The annual rate of interest shall not exceed \_\_\_\_\_%.
- 229  **ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed \_\_\_\_\_%. The initial interest  
230 rate shall be fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_% per  
231 year. The maximum interest rate during the mortgage term shall not exceed \_\_\_\_\_%. Monthly payments of principal  
232 and interest may be adjusted to reflect interest changes.

233 If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines  
234 165-172 or 435-442 or in an addendum attached per line 434.

235 ■ **BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, to promptly apply for a  
236 mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described  
237 in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no  
238 later than the deadline at line 219. **Buyer and Seller agree that delivery of a copy of any written loan commitment to  
239 Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after review of the loan  
240 commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall  
241 accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of  
242 unacceptability.**

243 **CAUTION: The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide  
244 the loan. BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN  
245 COMMITMENT TO SELLER OR SELLER'S AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS  
246 ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.**

247 ■ **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment; Seller may terminate this  
248 Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan  
249 commitment.

250 ■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already  
251 delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of  
252 same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is  
253 named in this Offer, Seller shall then have 10 days to deliver to Buyer written notice of Seller's decision to finance this  
254 transaction on the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing  
255 extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer authorizes Seller to obtain  
256 any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

257 ■ **IF THIS OFFER IS NOT CONTINGENT ON FINANCING:** Within 7 days of acceptance, a financial institution or third party  
258 in control of Buyer's funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification,  
259 sufficient funds to close. If such written verification is not provided, Seller has the right to terminate this Offer by delivering  
260 written notice to Buyer. Buyer may or may not obtain mortgage financing but does not need the protection of a financing  
261 contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands  
262 and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an  
263 appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.

264  **APPRAISAL CONTINGENCY:** This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised  
265 at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated  
266 subsequent to the date of this Offer indicating an appraised value for the Property equal to or greater than the agreed upon  
267 purchase price. This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers  
268 to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the agreed upon  
269 purchase price, accompanied by a written notice of termination.

270 **CAUTION: An appraisal ordered by Buyer's lender may not be received until shortly before closing. Consider whether  
271 deadlines provide adequate time for performance.**

272 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the  
273 Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as  
274 defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple  
275 listing service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information  
276 and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers  
277 researching comparable sales, market conditions and listings, upon inquiry.

278 **DEFAULT** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and  
279 conditions of this Offer. A material failure to perform any obligation under this Offer is a default which may subject the  
280 defaulting party to liability for damages or other legal remedies.

281 If Buyer defaults, Seller may:

282 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or

283 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual  
284 damages.

285 If Seller defaults, Buyer may:

286 (1) sue for specific performance; or

287 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

288 In addition, the Parties may seek any other remedies available in law or equity.

289 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
290 discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution  
291 instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of  
292 law those disputes covered by the arbitration agreement.

293 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD**  
294 **READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS**  
295 **OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL**  
296 **RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE**  
297 **CONSULTED IF LEGAL ADVICE IS NEEDED.**

298 **ENTIRE CONTRACT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller  
299 regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds  
300 and inures to the benefit of the Parties to this Offer and their successors in interest.

301 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons  
302 registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at  
303 <http://www.widocoffenders.org> or by telephone at (608) 240-5830.

304  **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's  
 305 property located at \_\_\_\_\_, no later than \_\_\_\_\_. If Seller accepts  
 306 a bona fide secondary offer, Seller may give written notice to Buyer of acceptance. If Buyer does not deliver to Seller a written  
 307 waiver of the Closing of Buyer's Property Contingency and \_\_\_\_\_

308 \_\_\_\_\_  
 309 **[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF ALL**  
 310 **CONTINGENCIES, OR PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.)]** within \_\_\_\_ hours of Buyer's Actual  
 311 Receipt of said notice, this Offer shall be null and void.

312  **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery  
 313 of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior  
 314 to any deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers.  
 315 Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice  
 316 that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than \_\_\_\_\_ days after acceptance of this Offer. All  
 317 other Offer deadlines which are run from acceptance shall run from the time this Offer becomes primary.

318 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3)  
 319 occupancy; (4) date of closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in this  
 320 Offer except: \_\_\_\_\_

321 \_\_\_\_\_  
 322 \_\_\_\_\_ . If "Time is of the Essence" applies to a date or  
 323 Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to  
 324 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

### 325 **TITLE EVIDENCE**

326 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed  
 327 (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as  
 328 provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements  
 329 entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use  
 330 restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate  
 331 Condition Report and in this Offer, general taxes levied in the year of closing and \_\_\_\_\_

332 \_\_\_\_\_  
 333 \_\_\_\_\_  
 334 \_\_\_\_\_

335 which constitutes merchantable title for purposes of this transaction. Seller shall complete and execute the documents  
 336 necessary to record the conveyance at Seller's cost and pay the Wisconsin Real Estate Transfer Fee.

337 **WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may**  
 338 **prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making**  
 339 **improvements to Property or a use other than the current use.**

340 ■ **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the  
 341 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all  
 342 costs of providing title evidence to Buyer. Buyer shall pay all costs of providing title evidence required by Buyer's lender.

343 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's)  
 344 **STRIKE ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after  
 345 the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy  
 346 exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap  
 347 coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 353-359).

348 ■ **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title  
 349 insurance commitment is delivered to Buyer's attorney or Buyer not less than 5 business days before closing, showing title to  
 350 the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 326-335,  
 351 subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and  
 352 exceptions, as appropriate.

353 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of  
 354 objections to title by the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to  
 355 remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is  
 356 unable to remove said objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the  
 357 objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be  
 358 null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give  
 359 merchantable title to Buyer.

360 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior  
 361 to the date of this Offer shall be paid by Seller no later than closing. All other special assessments shall be paid by  
 362 Buyer.

363 **CAUTION: Consider a special agreement if area assessments, property owners association assessments, special**  
 364 **charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are**  
 365 **one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments)**  
 366 **relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all**  
 367 **sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact**  
 368 **fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).**

369 **EARNEST MONEY**

370 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker  
 371 (Buyer's agent if Property is not listed or Seller's account if no broker is involved), until applied to the purchase price or  
 372 otherwise disbursed as provided in the Offer.

373 **CAUTION: Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the**  
 374 **Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special**  
 375 **disbursement agreement.**

376 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after  
 377 clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money.  
 378 At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest  
 379 money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said  
 380 disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse  
 381 the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller;  
 382 (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4)  
 383 any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an  
 384 interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to  
 385 exceed \$250, prior to disbursement.

386 ■ **LEGAL RIGHTS/ACTION:** Broker's disbursement of earnest money does not determine the legal rights of the Parties in  
 387 relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by broker. At least 30 days prior to  
 388 disbursement per (1) or (4) above, broker shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or  
 389 Seller disagree with broker's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement.  
 390 Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with 1-4  
 391 dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting attorneys regarding their  
 392 legal rights under this Offer in case of a dispute. Both Parties agree to hold the broker harmless from any liability for good faith  
 393 disbursement of earnest money in accordance with this Offer or applicable Department of Regulation and Licensing  
 394 regulations concerning earnest money. See Wis. Admin. Code Ch. RL 18.

395 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of  
 396 this Offer. An "inspection" is defined as an observation of the Property which does not include an appraisal or testing of the  
 397 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source,  
 398 which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building  
 399 materials from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors,  
 400 testers and appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in  
 401 this Offer. Buyer and licensees may be present at all inspections and testing. Except as otherwise provided, Seller's  
 402 authorization for inspections does not authorize Buyer to conduct testing of the Property.

403 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the**  
 404 **test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other**  
 405 **material terms of the contingency.**

406 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed  
 407 unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller.  
 408 Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported  
 409 to the Wisconsin Department of Natural Resources.

410  **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 395-409). This  
411 Offer is contingent upon a Wisconsin registered home inspector performing a home inspection of the Property which discloses  
412 no Defects. This Offer is further contingent upon a qualified independent inspector or independent qualified third party  
413 performing an inspection of \_\_\_\_\_

414 \_\_\_\_\_ (list any Property component(s) to be separately inspected, e.g.,  
415 swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order the inspection(s) and be  
416 responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a written report resulting  
417 from an authorized inspection, provided they occur prior to the deadline specified at line 421. Inspection(s) shall be performed  
418 by a qualified independent inspector or independent qualified third party.

419 **CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well**  
420 **as any follow-up inspection(s).**

421 This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers to Seller a copy of the  
422 written inspection report(s) and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice  
423 of Defects).

424 **CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**

425 For the purposes of this contingency, Defects (see lines 182-184) do not include structural, mechanical or other conditions the  
426 nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.

427 **■ RIGHT TO CURE:** Seller (shall)(shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure the Defects. If  
428 Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of  
429 Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and  
430 workmanlike manner; and (3) delivering to Buyer a written report detailing the work done within 3 days prior to closing. This  
431 Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1)  
432 Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure  
433 or (b) Seller does not timely deliver the written notice of election to cure.

434  **ADDENDA:** The attached \_\_\_\_\_ is/are made part of this Offer.

435 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_

436 \_\_\_\_\_  
437 \_\_\_\_\_  
438 \_\_\_\_\_  
439 \_\_\_\_\_  
440 \_\_\_\_\_  
441 \_\_\_\_\_  
442 \_\_\_\_\_

443 This Offer was drafted by [Licensee and Firm] \_\_\_\_\_

444 \_\_\_\_\_ on \_\_\_\_\_

445 (x) \_\_\_\_\_

446 Buyer's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

447 (x) \_\_\_\_\_

448 Buyer's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

449 **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 10 of the above Offer.

450 \_\_\_\_\_ Broker (By) \_\_\_\_\_

451 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER**  
452 **SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY**  
453 **ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS**  
454 **OFFER.**

455 (x) \_\_\_\_\_

456 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

457 (x) \_\_\_\_\_

458 Seller's Signature ▲ Print Name Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

459 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_

460 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

461 This Offer is rejected \_\_\_\_\_ This Offer is countered [See attached counter] \_\_\_\_\_

462 Seller Initials ▲ Date ▲ \_\_\_\_\_ Seller Initials ▲ Date ▲ \_\_\_\_\_