



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room N208, 4822 Madison Yards Way, Madison
Contact: Erin Karow (608) 266-2112
August 6, 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 June 27, 2018 (2)**
- C. Administrative Matters**
 - 1) Department Update
 - 2) Real Estate Examining Board Update
- D. Review of Real Estate Contractual Forms for Revision**
 - 1) **WB-11– Residential Offer to Purchase (3-48)**
 - a) Review of Proposed Revisions and Memo
 - b) Original Document
 - c) Proposed Revisions to Offer to Purchase Forms – Balance of Purchase Price
- E. Public Comments**

ADJOURNMENT

NEXT SCHEDULED MEETING: SEPTEMBER 12, 2018

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 4822 Madison Yards Way, 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
JUNE 26, 2018**

PRESENT: Joseph Busch (*arrived at 9:57 a.m.*), Casey Clickner, Debra Conrad, John Drzewiecki, Michael Gordon, Cori Lamont, Richard Marino (*excused at 12:00 p.m.*), Kim Moermond, Laura Peck, Jonathan Sayas (*arrived at 10:32 a.m.*), Thomas Weber, Jr., Robert Webster, and Pamela Widen

EXCUSED: Gary Tritz

STAFF: Erin Karow, Executive Director; Kate Stolarzyk, 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: John Drzewiecki moved, seconded by Cori Lamont, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES FROM MAY 2, 2018

MOTION: Debra Conrad moved, seconded by Pamela Widen, to approve the minutes of May 2, 2018 as published. Motion carried unanimously.

Joseph Busch arrived at 9:57 a.m.

Jonathan Sayas arrived at 10:32 a.m.

Richard Marino was excused at 12:00 p.m.

ADJOURNMENT

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

The meeting adjourned at 2:00 p.m.

OFFER TO PURCHASE REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: July 23, 2018

RE: **WB-11 Residential Offer to Purchase**

The 20180627WB-11WithTrackingJuly19WRA draft that accompanies this memo shows the result of the discussions of the WRA Forms Committee on July 19 as well as proposed provisions that are there for discussion purposes. This draft has accepted many of the changes made a few meetings ago and thus has a bit less tracking. 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!

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.

The Balance of Purchase Price – Lines 13-18:

The Wisconsin Land Title Association proposed new language based upon the practices and title company policies that have developed in the face of the wire transfer crooks. Please see the separate memo they have provided. The following was their proposed language. Please consider if this will be clear to consumers.

■ THE BALANCE OF PURCHASE PRICE shall be submitted by (wire transfer) (cashier’s check)
~~STRIKE ONE~~ (“wire transfer” if neither is stricken).
NOTICE: Funds submitted by wire transfer will be available for distribution, including for Seller proceeds, on the day received if all other closing requirements are met. Funds submitted by cashier’s check may not be available for distribution, including for Seller proceeds, until up to 7 days after receipt.

Alternate language was proposed and adopted by the WRA Forms Committee, as shown in the WB-11 draft. The Committee didn’t believe a buyer should be required to select a method of payment when drafting the offer; it is too soon -- before the title company closing the transactions and its policies are known:

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

NOTE: Because of the extraordinary threat of wire-fraud and other potential money transfer fraud, title companies and other settlement service providers may require more time for clearing of required funds. Buyers or Sellers anticipating using money transfers should personally contact the title company or other

settlement service provider to confirm requirements for transfer of funds. These communications should be directly between the Buyers and/or Sellers and the title company or settlement service provider, and do not involve the Firms or real estate agents.

The DSPS Real Estate Contractual Forms Advisory Committee modified the language with the result, after formatting the NOTE in bold, etc., that this provision in the draft now states:

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

NOTE: Because of the extraordinary threat of wire-and money transfer fraud. Buyers or Sellers anticipating using money transfers should personally contact the title company or other settlement service provider by phone or in person to confirm timing and other requirements for transfer of funds. These communications should be directly between ~~the~~ Buyers and/or Sellers and the title company or settlement service provider, and do not involve the Firms or real estate agents.

Both Committees are satisfied with this provision.

Included in Purchase Price – Line 19: 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 19-26 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 25-26. 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 40-41: 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 42-59

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.~~

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 is placed on line 59 or 60 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.

Lines 47 and 48 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 60-61, 68-70 -- 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 62-66:

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 **bBroom sSwept 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.)

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 DSPS Forms Committee did make/accept was to add the word “refuse” as shown in the draft at line 65 of the draft.

Both Forms Committees are satisfied with this provision.

Condition Affecting the Property or Transaction – Lines 71-133:

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.

The 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 135-141:

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 over the course of several meetings 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.

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 are not there.

The WRA Forms Committee agreed to this modification using the Seller as the default. The DSPS Real Estate Contractual Forms Advisory Committee believes this provision should be left as it is because the various markets have adjusted to using that language and modifying it in addenda, etc. as needed. They thought it best to not upset the applecart when everyone is used to the existing language.

Wire Fraud Caution, lines 138-141: The WRA Forms Committee was in favor of considering a brief wire fraud warning. 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 DSPS Real Estate Contractual Forms Advisory Committee thought this was an awesome idea and reworked the language to provide (with further suggested edits shown in yellow highlighting):

CAUTION: When wiring funds, any wiring instructions received should be independently verified by phone or in person with the title company, financial institution, or entity directing the transfer. The Firm is not responsible for the transmission or forwarding of any wiring or money transfer instructions.

NEW: “Firm” Definition: The WRA Forms Committee made a further modification, which led to the discussion that the term Firm was not defined in the offer. A definition has been added to the draft at line 207 and the term now has initial caps in the draft as appropriate.

CAUTION: When wiring funds, any wiring instructions received should be independently verified by phone or in person with the title company, financial institution, or entity directing the transfer. The real estate licensees in this transaction are Firm is not responsible for the transmission or forwarding of any wiring or money transfer instructions.

The DSPS Real Estate Contractual Forms Advisory Committee modified this a bit so the result shown in the draft now provides:

CAUTION: To reduce the risk of wire transfer fraud, any wiring instructions received should be independently verified by phone or in person with the title company, financial institution, or entity directing the transfer. The real estate licensees in this transaction are not responsible for the transmission or forwarding of any wiring or money transfer instructions.

Both Forms Committees agreed to this language.

Definition of Business Day – Lines 194-196

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?

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 197-203:

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 Ddays 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 203:

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 208-220:

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:

➤ **Other possible additions/discussions: nesting thermostats, wireless doorbells, vanity mirrors, bathroom mirrors**

■ 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 30-31. 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.

NEW: Definitions – Defect – Line 204-206:

There is a new proposal to modify the definition of defect in incorporate the statement now in the Inspection contingency regarding defects the buyer learned of before signing the offer. This comes up with many inspection or testing provisions (potentially all of them) and rather than restate this in all such contingencies it may make more sense to include it here instead.

■ **DEFECT:** “Defect” means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises. For the purposes of inspection and testing contingencies in this Offer, Defects do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.

WRA discussion was that some practitioners line out this language in the Inspection Contingency already and it is better addressed on a case-by-case basis.

➤ **The WRA Forms Committee rejected this suggestion. Other suggestions and ideas?**

Definitions – Firm – Line 207:

The definition of “Firm” from the WB-1 Residential Listing Contract was inserted at line 212:

■ **FIRM:** “Firm” means a licensed sole proprietor broker or a licensed broker business entity.

Both Forms Committees approved.

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.

Both Forms Committee decided to live with the status quo and leave it to a case by case discussion.

Maintenance, Property Damage between Acceptance and Closing, and Buyer’s Pre-Closing Walk-Through – Lines 227-242:

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.

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 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 materially 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 amount of the damage shall exceeds 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 small edits made by the DSPS Forms Committee above in yellow highlights: they disagreed about the addition of the word "solely" and thought the provision was working sufficiently well as it is.

Both Committees have agreed to these changes.

Financing Contingency overall – Lines 243-290

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:

Lines 244-246 – 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 247: 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?

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.

Should lines 244-246 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 DSPS Committee thought it best to leave the language at lines 244-245 as: and the WRA forms Committee now concurs:

“This Offer is contingent upon Buyer being able to obtain a written”

Line 246-247: 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 248-249:

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. The DSPS Committee agrees.

Lines 250-251: Do we continue to refer to “discount points ~~and/or loan origination fee~~ in an amount not to exceed _____% (“0%” if no entry) of the loan?”

The WRA Forms Committee suggested making this just refer to discount points and delete “and/or loan origination fee” from line 250. Instead origination fees would be referred to in the Buyer’s Loan Commitment section at lines 264-265 as shown in the draft.

The WRA Committee approves. Does the DSPS Committee agrees but entered the default of 0% for the discount points as shown above and in the draft. The WRA Committee approves.

NEW: Loan Adjustment Amount: Lines 252-254: 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 255-261: 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. They asked how they are to verify a series of timeframes and interest rates on the weekend, and also noted that the loan commitments do not give all of this detail.

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 after ____ months, and (annually thereafter) (____) **COMPLETE OR STRIKE AS APPLICABLE**. The maximum interest rate during the mortgage term shall not exceed ____% lifetime. Monthly payments of principal and interest may be adjusted to reflect interest changes.

The DSPS Committee believed that agents should do their homework and talk to lenders and find out what is actually available when writing offers. It should be written to reflect loans that are actually attainable in the market. The adjustable rate financing that is available may have multiple rate step ups and time periods.

The DSPS Real Estate Contractual Forms Advisory Committee discussed this again and decided to go with the detail but to also include defaults to assist those unable to come up with the details themselves. They were confident these were very standard, typical numbers concerning interest rate increases.

ADJUSTABLE RATE FINANCING: The initial 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 ____% (2% if no entry), and by not more than ____% (1% if no entry) a second time and annually thereafter. The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus ____% (6% increase if no entry). Monthly payments of principal and interest may be adjusted to reflect interest changes.

Both Forms Committees are satisfied.

Financing Contingency – Buyer’s Loan Commitment – Lines 264-281:

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, but further discussions have not been in favor.

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.**

The WRA Forms Committee initially 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.

- Note that wire fees at this time are \$25 per wire transfer – should this be included in a caution or provision or do we rely upon licensees to tell the parties?

Lines 273-274– 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 to add at the end of line 273 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.

NEW: Also, should there be a form for giving written delivery instructions? Should the WB-41 Notice form be amended to add a check box for an item whereby the buyer gives loan commitment delivery authorization?

- The DSPS Committee agree is somewhat conflicted and went in circles at its last meeting regarding what buyer approval is needed, whether it must be written and whether it must be delivered when a loan commitment is delivered. The following is an array of possibilities marked (A) – (G). What is best and are there any other formulations for how the loan commitment delivery should be handled?

NOTE: the DSPS Committee skipped around a little bit and did not discuss this issue on June 27.

- **(A) Separate delivery subsection, sign loan commitment first preference, Buyer direct delivery second, or written instructions delivered with loan commitment as third option**
 - **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.
- 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.

- (B) The DSPS Committee left their discussion here and then requested to see options: Buyer may sign loan commitment or give written instructions delivered with loan commitment

■ BUYER'S LOAN COMMITMENT: ... Buyer and Seller agree that **Buyer's** 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.** 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.**

The Financing Commitment Contingency shall be considered satisfied if a copy of the loan commitment is delivered to Seller provided it includes the Buyer's signature, or if the Buyer authorizes delivery of the loan commitment with instructions provided by an email, text, or written direction.

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 **SUBAGENTS SHALL NOT DELIVER A LOAN COMMITMENT** WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

- (C) Same as above but this one specifies different means that can be used for Buyer's written directions

■ BUYER'S LOAN COMMITMENT: ... Buyer and Seller agree that **Buyer's** 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, or by Buyer's direction to deliver stated in a Notice, email, text, or other written directive delivered with the loan commitment.** Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability **or if not accompanied by the Buyer's signature or written direction to deliver said commitment letter.**

....

- (D) This one requires signature or written delivery instructions but instructions not required to be delivered – presumes better have written instructions saved in case you get called out on it

■ BUYER'S LOAN COMMITMENT: ... Buyer and Seller agree that **Buyer's** 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 or by Buyer's written direction to deliver which shall be retained by the agent, lender or other person effecting delivery.** Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability ~~or if not accompanied by the buyer's written direction to deliver said commitment letter.~~

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 **SUBAGENTS SHALL NOT DELIVER A LOAN COMMITMENT WITHOUT BUYER'S SIGNATURE OR** PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

- (E) This one just calls for Buyer's approval of loan commitment but no delivery directions and no written approval per se but a prompt to keep evidence of Buyer's approval on file

■ BUYER'S LOAN COMMITMENT: ... Buyer and Seller agree that **Buyer's** delivery of a copy of any written loan commitment to Seller (even if subject to conditions), **after Buyer's review and approval of same,** 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 or by Buyer's written direction to deliver which shall be retained by the agent, lender or other person effecting delivery of the loan commitment is responsible to maintain confirmation of Buyer's approval.~~ 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 SUBAGENTS SHALL NOT DELIVER A LOAN COMMITMENT WITHOUT BUYER'S PRIOR ~~WRITTEN~~ APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

- (F) This one just presumes Buyer's approval of loan commitment but no delivery directions and no written approval per se although presume sender retained confirmation of approval

■ BUYER'S LOAN COMMITMENT: ... Buyer and Seller agree that ~~Buyer's~~ delivery of a copy of any written loan commitment to Seller (even if subject to conditions), ~~after Buyer's review and approval,~~ 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 or by Buyer's written direction to deliver which shall be retained by the agent, lender or other person effecting delivery has received and retained confirmation of Buyer's approval.~~ 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 SUBAGENTS SHALL NOT DELIVER A LOAN COMMITMENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

Based on the discussion of the WRA Forms Committee, their conclusions were that:

- (1) a signature on the loan commitment is not a good idea because too many buyers do not know what the significance of that would be,
- (2) lenders should not be allowed to deliver loan commitment to the seller based on the recent incidences observed of lenders doing just that without informing the agents or even without any buyer signature,
- (3) the WB-41 Notice should have a check box item for buyer to give written instructions to deliver the loan commitment,
- (4) the WB-41 or some other educational document should explain the significance of the buyer delivering the loan commitment: that they are waiving rights under the offer, the consequences if the loan doesn't go through and the buyer does not get the funds, that this shifts the risk of loss, and the role of the appraisal contingency to protect the buyer – there should be informed consent by Buyer giving directions to deliver the loan commitment, and
- (5) Don't want to make it easier for Buyer to deliver loan commitment.

➤ Does this work or are there additional suggestions and ideas?

- (G) This one is based on the WRA Forms Committee discussion:

■ BUYER'S LOAN COMMITMENT: Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. The Property shall be appraised as required by Buyer's lenders or underwriters. 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 this Financing Commitment Contingency if Buyer has

reviewed and approved the loan commitment and directed, in writing, delivery of the loan commitment. Seller has no ability to reject a loan commitment unless Seller has added standards to this contingency that are not met. Buyer's written delivery directions shall accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability or if not accompanied by Buyer's written delivery directions. Delivery of the loan commitment by Buyer's lender shall not satisfy this contingency.

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.

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

BE AWARE THAT PARTICULARLY COMMERCIAL LENDERS ARE NO LONGER PROVIDING LOAN COMMITMENTS AND THAT A CHANGE MAY BE COMING TO RESIDENTIAL AS WELL!

NEW: Lines 265-266: Lender appraisal of Property as condition of loan. There seems to be confusion about whether Buyer's lender is permitted to have an appraiser inspect the Property in order to appraise the Property. Many practitioners assume this is automatically so – see lines 399-401 of the current WB-11: “Seller agrees to allow Buyer's inspectors, testers and appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer.” Others are less certain to the point where it may be wise to include a statement within the Financing Commitment Contingency that removes any doubt.

See the addition of “The Property shall be appraised as required by Buyer's lenders or underwriters” in the draft at lines 265-266.

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

Lines 278-279– 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.

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

Lines 273 and 281 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.”

The WRA Forms Committee rejected the above suggestion because it covers only part of the situation. **Once again,** they discussed what a notice of unacceptability means, and came up with commitment provisions that are additional requirements the Buyer didn’t bargain for or anticipate, the buyer can’t satisfy or that are too burdensome, for instance, can’t get insurance for knob and tube or 60 amps, substantial repairs required by lender, tax documentation, judgements, liens, property conditions, escrow, etc. They concluded it is too difficult to define and they believe it is mostly addressed under the good faith and due diligence provision if the Buyer is claiming this without a valid reason. It is case by case.

➤ **Does the DSPS Committee agree or are there other suggestions and ideas?**

Financing Contingency – Seller Termination Rights – Lines 282-287:

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.**

➤ **The WRA Forms Committee approves. Does the DSPS Committee agree 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, which was moved in the draft to lines 280-281, 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 – moved to lines 280-281.**

➤ **Does the DSPS Committee agree 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.

The WRA Forms Committee reviewed this and believes that when a contingency fails that is not a breach of contract. There may be other issues that would be addressed under the good faith, due diligence provision – there could be breaches of those duties, but the language is otherwise not the grounds for a separate beach or cause of action. The WRA Forms Committee wishes to keep the Seller Termination language as:

■ 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 the DSPS Committee agree or are there other suggestions and ideas?**

Financing Unavailability/Seller Financing – Lines 288-297:

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, shouldn't a loan commitment that does not meet Buyer's stated terms 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 and it is just determined case by case?
- ◆ 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.

Another variation showing the separation of the Seller Financing into a separate subsection, changing up and trying to simplify the language 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 (not applicable if ~~Unless~~ a specific loan source is named in this Offer), Seller shall ~~then~~ have ___ 10 days ("5" if left blank) after the deadline on line xxx to deliver to Buyer written notice of Seller's decision to finance-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, 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.

The DSPS Committee reworked this area of the Financing Commitment Contingency with this result:

■ **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 promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability.

SELLER FINANCING: Seller shall have 10 days from the earlier of (i) Buyer delivery of written notice of evidence of unavailability as noted in lines XXX to XXX or (ii) the deadline for delivery of the loan commitment set on lines ~~XXX to XXX~~, to deliver to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under 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, the option for Seller to provide financing shall be considered waived. Buyer agrees to cooperate with and authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

The Committee thought it was important for the seller to be able to stop the buyer from weaseling out, for example, with a falsified loan commitment denial. This reflects a substantial change because the buyer can't block seller financing with a specific loan source under this proposal because a specific lender does not preclude the seller from financing. It would, however, suggest that only one denial letter is needed in those instances.

Whatever is included in this section, and in the Financing Commitment Contingency, there will always be available the argument that the buyer acted in bad faith and the seller can take legal action on that basis if it can be proved.

Going to an optional check box for the Seller Financing will take a bit of training as it represents an adjustment that will need to be made for those who favor this provision.

This proposed provision does not provide a deadline for the buyer to provide notice along with denial letters or notices of unacceptability. There was concern that if there was a specific deadline then buyers who receive denial letters early would just sit on them and wait and not act promptly. There is, however, a deadline for the seller to decide whether to self-finance: 10 days after Financing Commitment Contingency deadline.

Both Forms Committees are satisfied with this.

If This Offer Is Not Contingent On Financing – Lines 309-316:

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? One request is it should say Within 7 days of acceptance, a financial institution or third party in control of Buyer's funds shall ~~provide-deliver to~~ Seller ~~with~~ reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

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?

The DSPS Committee moved this provision so it now follows the Appraisal Contingency and modified it slightly:

- **IF THIS OFFER IS NOT CONTINGENT ON FINANCING:** Within ~~7~~**seven** 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 prior to Seller’s Actual Receipt of a copy of Buyer’s written verification**. 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.

Both Forms Committees are satisfied with this.

Appraisal Contingency – Lines 298-308:

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.

OR

This is the version adopted by/recommended by the WRA Forms Committee, as shown in the draft:

This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date stated on line 1 indicating an appraised value for the Property equal to or greater than the agreed upon purchase price. This contingency shall be deemed satisfied unless Buyer, within _____ days (~~"30" if left blank~~) of acceptance, delivers to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the agreed upon purchase price, and a Buyer-signed amendment which reduces the purchase price to a price not less than the appraised value and includes no other changes, terms or conditions. Seller shall have two days to execute and deliver the amendment to Buyer in satisfaction of this contingency. If Seller does not deliver the accepted price amendment, Buyer may deliver a notice of termination to Seller and this Offer shall be null and void.

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

➤ **Does the DSPS Committee agree 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.

➤ **The WRA Forms Committee was not in favor of this idea and believed that the information can be obtained by the title company directly and didn't want agents involved in giving legal advice about giving title, which is where they feared the conversation about primary residence would lead. Does the DSPS Committee agree or are there other suggestions and ideas?**

Request for FIRPTA Provision – Lines 317-326

The disposition of a U.S. real property interest by a foreign person (the transferor) (for example, a non-resident alien) 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>

Exceptions to FIRPTA withholding: <https://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding> includes residential property purchased for less than \$300,000 and used as a home.

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.

The Wisconsin Land Title Association has also requested that a FIRPTA provision be included. This is based on the Minnesota provision and perhaps too detailed, but it does make the point that the parties will need to complete an affidavit and provide their Social Security numbers on or before closing.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA): Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must be notified in writing and must withhold tax if the transferor (Seller) is a foreign person and no exceptions from FIRPTA withholding apply. Buyer and Seller agree to comply with FIRPTA requirements under IRC § 1445. Seller shall represent and warrant, under penalties of perjury, whether Seller is a "foreign person," as defined in FIRPTA, prior to closing. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed. Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement reasonably necessary to comply with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security numbers. Due to the complexity and potential risks of failing to comply with FIRPTA, including Buyer's responsibility for withholding the applicable tax, Buyer and Seller should seek appropriate legal and tax advice regarding FIRPTA compliance, as the respective licensees representing or assisting either party will be unable to assure either party whether the transaction is exempt from FIRPTA withholding requirements.

Another version:

Compliance with Foreign Investment in Real Property Tax Act of 1980 (FIRPTA): The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) requires persons purchasing U.S. real property interests (transferees) from foreign persons, certain purchasers' agents, and settlement officers to withhold 15% of the amount realized on the disposition (special rules for foreign corporations). <https://www.irs.gov/individuals/international-taxpayers/firpta-withholding>. Exceptions to this withholding include residential property used as a home that sells for less than \$300,000. <https://www.irs.gov/individuals/international-taxpayers/exceptions-from-firpta-withholding>.

Section 1445 of the Internal Revenue Code (IRC) provides a transferee (Buyer) of a United States real property interest must be notified in writing and must withhold tax if the transferor (Seller) is a foreign person and no exceptions from FIRPTA withholding apply.

The Parties agree to comply with FIRPTA requirements under IRC § 1445. Seller shall represent and warrant, under penalties of perjury, whether Seller is a "foreign person," as defined in FIRPTA, prior to closing. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed. The Parties shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement reasonably necessary to comply with the FIRPTA requirements, including delivery of their respective federal taxpayer identification numbers or Social Security numbers.

Due to the complexity and potential risks of failing to comply with FIRPTA, including Buyer's responsibility for withholding the applicable tax, the Parties should seek appropriate legal and tax advice regarding FIRPTA compliance, as the respective firm and its agent are unable to assure either Party whether the transaction is exempt from FIRPTA withholding requirements.

Another version:

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA): Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. The Amount Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

Seller (is)(is not) ~~STRIKE ONE~~ a foreign person and shall provide a sworn affidavit under penalties of perjury prior to closing confirming this status and furnishing Seller's Social Security number or taxpayer identification number. If Seller is a Foreign Person and Buyer fails to withhold, Buyer may be held liable for the tax.

- **The WRA Forms Committee was generally in favor of including a provision but did not commit to a particular one. The version shown immediately above is in the draft as a suggestion for a version that explains the important points and creates a contractual commitment for the seller to provide an affidavit. Are there other suggestions and ideas?**

Testing Contingency – Lines 359-381:

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

The WRA Forms Committee had a general, high level discussion on July 19 about testing and inspection contingency provisions:

- ◆ There seemed to be some inclination to include a provision for testing but with no attempt to decide whether that should be a general provision, a radon testing contingency, or both.
- ◆ The suggestion was made that perhaps whatever testing might be added could share the Contingency Satisfaction/Right to Cure with the Inspection Contingency. In the draft, highlighted in yellow is a combination general testing/radon testing provision that shares Contingency Satisfaction/Right to Cure language.
- ◆ The right to cure should state what happens if the seller fails to deliver the reports. See an example of that at the end of the Contingency Satisfaction/Right to Cure section in the draft at lines 408-410.
- ◆ It was pointed out that a floating deadline is difficult to work with. There is an example in the draft at lines 400-403: “The contingency shall be deemed satisfied unless Buyer, within five days of the earlier of 1) Buyer's Actual Receipt of the applicable testing report(s) or 2) the deadline for delivery of said report(s), delivers to Seller a copy of the written report(s) and written notice stating why the report(s) do(es) not satisfy the contingency standard.” It can be difficult to prove actual receipt and you can't really calendar the deadline – the commenter would prefer just one deadline.

More options for general testing:

VARIOUS TESTS This Offer is contingent upon **(Buyer obtaining)(Seller providing) [STRIKE ONE]** (“Seller providing” if neither is stricken) a current written report documenting the results of the following tests: _____, within _____ days of acceptance, at **(Buyer's)(Seller's) [STRIKE ONE]** expense (Buyer's expense if neither is stricken). This testing contingency shall be deemed satisfied unless Buyer, within five (5) days of Buyer's receipt of the test report(s), delivers to Seller a copy of the test report(s) and a written notice identifying the defect(s) to which Buyer objects. For the purposes of this contingency, “defect” is defined as that term is defined in

the base Offer to Purchase (WB State form). Seller (**shall**)(**shall not**) [**STRIKE ONE**] have the right to cure. (Seller shall have a right to cure if no choice is indicated.) If Seller has the right to cure, the procedure for electing whether to cure and/or curing any “defect” shall be the same stated in the base Offer to Purchase.

VARIOUS TESTS: This Offer is contingent upon:

___ Buyer obtaining at Buyer expense ___ Seller providing at Seller expense (Buyer obtaining if no choice indicated)

a written report from a qualified independent expert documenting the results of the following tests: _____

within _____ days of acceptance. This testing contingency shall be deemed satisfied unless Buyer, within five days of Buyer’s receipt of the test report(s), delivers to Seller a copy of the test report(s) and a written notice identifying those result(s) to which Buyer objects.

CAUTION: A proposed amendment will not satisfy this notice requirement.

___ Seller shall have the right to cure ___ Seller shall not have the right to cure. (Seller shall have right to cure if no choice indicated).

The procedure for curing those result(s) to which Buyer objects and the effect of serving notice shall be as stated in the Offer to Purchase.

Radon Testing and Testing Contingency combination – Lines 382-410:

Yellow highlights. 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.

More options for radon testing:

RADON TESTING: This Offer is contingent upon a qualified tester conducting a radon test on this Property in accordance with EPA protocol within _____ days from: (A) date of acceptance of this Offer; or, (B) the earlier of: 1) receipt of an accepted offer on Buyer’s property; or, 2) satisfaction of the Closing of Buyer’s Property Contingency in this Offer STRIKE A or B to determine that any radon level which may exist is not at or above the current U.S. EPA guideline for occupied spaces of the Property (4 pCi/L). Radon test to be taken on the lowest habitable level of Property. Buyer is aware that the test result will not guarantee future radon levels. The cost of the radon test shall be paid by [Buyer] [Seller] STRIKE ONE (“Buyer” if neither is stricken). Seller [shall] [shall not] STRIKE ONE have the right to cure (“Shall” if neither is stricken).

This contingency shall be deemed satisfied if the radon test discloses a level less than 4 pCi/L.

If Seller is given the right to cure and radon test discloses a radon level at or above 4 pCi/L, Buyer shall, within the time period set forth above, notify Seller of same in writing along with a copy of the tester’s report. In such event, Seller shall, no later than 10 days prior to closing: (1) have a qualified radon professional install in a good and workmanlike manner, an appropriate remediation system to lower the radon level to below 4.0 pCi/L; and, (2) provide Buyer with a post remediation air quality test, completed by a radon remediation professional, showing a post remediation level of less than 4.0 pCi/L.

If Seller is not given a right to cure and Buyer has made timely delivery of the above Notice and Report, then this Offer shall be null and void.

RADON TEST This Offer is contingent upon (**Buyer obtaining**)(**Seller providing**) [**STRIKE ONE**] (“Seller providing” if neither is stricken) a current written report, within _____ days of acceptance, documenting the results of a radon gas test on the Property, conducted by a professional testing service or

contractor qualified to perform radon testing. The parties agree testing must be conducted consistently with Environmental Protection Agency (EPA) protocols and standards. Seller **(shall)(shall not)** [STRIKE ONE] have the right to remediate. (Seller shall have a right to remediate if no choice is indicated.) If said report indicates a radon level below the EPS standard of 4.0 pCi/L (pico curies per liter of air), this contingency shall be considered satisfied. If the test results indicate a radon level at or above 4.0 pCi/L, Buyer may deliver to Seller a notice objecting to the level of radon, along with a copy of the test results, within ____ days (“3” if left blank) of delivery of the radon gas test report. This Offer shall be considered terminated, effective upon delivery of said notice and test results, unless Seller has the right to remediate. If Seller has the right to remediate, Seller may satisfy this contingency by: (1) delivering to Buyer, within ____ days (“5” if left blank) of delivery of Buyer’s notice, a written notice of Seller’s election to remediate, and (2) hiring a professional or contractor qualified to perform radon remediation to install in a good and workmanlike manner an appropriate remediation system to lower the radon gas level on the property to below 4.0 pCi/L, and (3) providing a re-test report to Buyer after installation of remediation system, confirming a radon gas level in the test which is below 4.0 pCi/L, no later than three (3) days prior to closing. (Note: Any re-test shall be performed by, or under the supervision of, a professional testing service or contractor qualified to perform radon testing.) This Offer shall also be terminated if Buyer submits the test results and a notice objecting to the radon levels identified in the test results and Seller has the option to remediate, but the Seller either elects not to remediate, or fails to elect to remediate.

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).

Than 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: ~~(1) 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 411-425:

Grey highlights. 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 426-431:

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 432-442

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 443-448:

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 (“five” 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 456-495:

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 478 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 lines 486-487 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 494-496 the provision provides a choice for when the title commitment will be furnished and offers shifts the opportunity for obtaining the title insurance commitment closer 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. **They do have other suggestions that will be forthcoming**, and we hope to have a written statement regarding all of this from WLTA so we may capture all relevant explanations and reasoning!

The WB-11 and the WB-14 Residential Condominium offers have the title commitment delivery time frame at the end of the process immediately before closing which may not allow any time to point out and address concerns and may delay closing or force decisions the buyer and/or title company would not otherwise make.

The following 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.

- **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), 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 ~~326-335xxx-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 five days of delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have a reasonable time, but not exceeding ~~15-_____~~ days ("five" if left blank) from Buyer's delivery of the notice stating title objections, 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 five 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.

Another example of language:

WB-12 Farm Offer, WB-15 Commercial, WB-13 Vacant Land

- **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 not more than _____ days after acceptance ("15" if left blank), 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 293-299, 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 within _____ days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have a reasonable time, but not exceeding _____ days ("5" if left blank) from Buyer's delivery of the notice stating title objections, to deliver notice to Buyer stating Seller's election to remove the objections by the time set for closing. In the event that Seller is unable to

remove said objections, Buyer may deliver to Seller written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, Buyer shall deliver written notice of termination and 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.

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

Special Assessments/Other Expenses: Lines 496-505:

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 524-533:

A proposed suggestion – starting at line 514:

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?

Another similar proposal:

In the event this Offer is terminated by Buyer pursuant to a contingency in the this Offer, the earnest money shall be returned to Buyer if Seller does not object within 10 days of delivery of the notice terminating the Offer.

Language shown in the draft at line 507 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 522 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?

Inspections and Testing – Lines 532-546:

There has been a request from a member who believes there is a contradiction in language between the listing and the offer regarding a buyer's agent's responsibility to attend a home inspection.

Listing contract line: 260-261 “...and that buyers OR licensees may be present at all inspections and testing....”

Offer to purchase lines 537-538: Buyer AND licensees may be present at all inspections and testing....”

He believes that the language of the listing implies that a buyer's agent does NOT have to accompany buyer on home inspection, but language of offer implies that either both buyer AND licensee will attend or neither buyer nor licensee will attend – its either buyer and their agent + home inspector or home inspector solo. Sounds like we need our grammar experts!

Inspection Contingency – Lines 547-570:

Note the insertion of the word “independent” on line 548 and a default timeframe of 20 days on line 558. There also is a clarification to the time frame on line 567 – at least three 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 565 says seven days. Should it be shorter, for instance, five 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 586-587:

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-11RevisionWRA8-6-18

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 additional
7 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 ("five" if left blank) of acceptance
12 to the listing Firm or _____.

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

14 **NOTE: Because of the extraordinary threat of wire-and money transfer fraud. Buyers or Sellers anticipating using**
15 **money transfers should personally contact the title company or other settlement service provider by phone or in**
16 **person to confirm timing and other requirements for transfer of funds. These communications should be directly**
17 **between Buyers and/or Sellers and the title company or settlement service provider, and do not involve the Firms or**
18 **real estate agents.**

19 ■ INCLUDED IN PURCHASE PRICE is the Property, all Fixtures on the Property as of the date stated on line 1 (unless excluded
20 at lines xx-xx), and the following additional items: _____
21 _____
22 _____
23 _____
24 _____.

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

27 ■ NOT INCLUDED IN PURCHASE PRICE: _____
28 _____
29 _____.

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

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

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

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

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

40 **INCLUSION OF OPTIONAL PROVISIONS** Terms of this Offer that are preceded by an OPEN BOX () are part of this
41 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.

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

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

46 Name of Seller's recipient for delivery, if any: _____

47 Name of Buyer's recipient for delivery, if any: _____

48 (2) **Fax:** fax transmission of the document or written notice to the following number:
49 Seller: (_____) _____ Buyer: (_____) _____

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

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

55 Address for Seller: _____

56 Address for Buyer: _____

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

58 E-Mail address for Seller: _____
59 E-Mail address for Buyer: _____
60 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or **Actual Receipt** by, any named Buyer or Seller constitutes
61 personal delivery to, or **Actual Receipt** by, all Buyers or Sellers.
62 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this
63 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
64 Buyer's occupancy, Property shall be in broom swept condition and free of all debris, refuse, and personal property except for
65 personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be given
66 subject to tenant's rights, if any.
67 **DEFINITIONS**
68 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or
69 written notice physically in the Party's possession, regardless of the method of delivery. Should this standard be retained versus
70 just delivery, i.e., when a document is emailed??
71 ■ **CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION:** "Conditions Affecting the Property or Transaction" are
72 defined to include:
73 a. Defects in the roof, basement or foundation (including cracks, seepage and bulges), electrical system, or part of the
74 plumbing system (including the water heater, water softener and swimming pool); or basement, window, or plumbing leaks;
75 overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions.
76 b. Defects in heating and air conditioning system (including the air filters and humidifiers); in a wood burning stove or fireplace;
77 or caused by a fire in a stove or fireplace or elsewhere on the Property.
78 c. Defects related to smoke detectors or carbon monoxide detectors, or a violation of applicable state or local smoke detector
79 or carbon monoxide detector laws.
80 d. Defects in any structure, or mechanical equipment included as Fixtures or personal property.
81 e. Rented items located on the Property such as a water softener or other water conditioner system.
82 f. Defects caused by unsafe concentrations of, or unsafe conditions on the Property relating to, radon, radium in water
83 supplies, lead in paint, soil or water supplies, unsafe levels of mold, asbestos or asbestos-containing materials or other
84 potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other hazardous or toxic
85 substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but
86 not directly serving the Property.
87 **NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential**
88 **properties built before 1978.**
89 g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances
90 on neighboring properties.
91 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
92 in a well that serves the Property, including unsafe well water.
93 g. A septic system or other private sanitary disposal system serves the Property; Defects in the septic system or other sanitary
94 disposal system on the Property; or any out-of-service septic system serving the Property not closed or abandoned according
95 to applicable regulations.
96 h. Underground or aboveground fuel storage tanks on or previously located on the Property; or Defects in the underground or
97 aboveground fuel storage tanks on or previously located on the Property. (The owner, by law, may have to register the tanks
98 with the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the
99 tanks are in use or not. Department regulations may require closure or removal of unused tanks.)
100 i. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased); or Defects in an "LP"
101 tank on the Property.
102 j. Notice of property tax increases, other than normal annual increases, or pending Property reassessment; remodeling that
103 may increase the Property's assessed value; pending special assessments; or Property is within a special purpose district, such
104 as a drainage district, that has authority to impose assessments.
105 k. Proposed construction of a public project that may affect use of the Property; Property additions or remodeling affecting
106 Property structure or mechanical systems during Seller's ownership without required permits; or any land division involving the
107 Property without required state or local permits.
108 l. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit and
109 there are common areas associated with the Property that are co-owned with others.
110 m. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain, wetland
111 or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin Department of Natural
112 Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures related to shoreland
113 conditions, enforceable by the county.
114 n. Nonconforming uses of the Property; conservation easements, restrictive covenants or deed restrictions on the Property;
115 or nonowners having rights to use part of the Property, including, but not limited to, rights-of-way and easements other than
116 recorded utility easements.

- 117 o. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment conversion
 118 charge; or payment of a use-value assessment conversion charge has been deferred.
- 119 p. All or part of the Property is subject, enrolled in, or in violation of a farmland preservation agreement, Forest Crop Law,
 120 Managed Forest Law, the Conservation Reserve Program, or a comparable program.
- 121 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
 122 transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of which
 123 the Property owner is a member.
- 124 r. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint
 125 driveway) affecting the Property.
- 126 s. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance
 127 claims relating to damage to the Property within the last five years.
- 128 t. A pier attached to the Property not in compliance with state or local pier regulations.
- 129 u. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other
 130 insect infestations.
- 131 v. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or
 132 more burial sites on the Property.
- 133 w. Other Defects affecting the Property.

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

135 **CLOSING** This transaction is to be closed on _____
 136 at the place selected by **Seller, unless otherwise agreed by the Parties in writing.** If the date for closing falls on a weekend, or
 137 federal or state holiday, the closing date shall be **the next Business Day.**

138 **CAUTION: To reduce the risk of wire transfer fraud, any wiring instructions received should be independently verified**
 139 **by phone or in person with the title company, financial institution, or entity directing the transfer. The real estate**
 140 **licensees in this transaction are not responsible for the transmission or forwarding of any wiring or money transfer**
 141 **instructions.**

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

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

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

147 Real estate taxes shall be prorated at closing based on **CHECK BOX FOR APPLICABLE PRORATION FORMULA** :

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

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

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

154 _____.

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

159 Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on
 160 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
 161 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall re-
 162 prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation and is
 163 the responsibility of the Parties to complete, not the responsibility of the real estate Firms in this transaction.

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

167 _____

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

169 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property which includes one-to-four dwelling units to
 170 provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been
 171 inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal
 172 representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The law provides:
 173 "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the contract of sale
 174 . . . , to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does not receive a
 175 report within the 10 days may, within two business days after the end of that 10-day period, rescind the contract of sale . . . by
 176 delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if a

177 Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is submitted to
178 Seller. Buyer should review the report form or consult with an attorney for additional information regarding rescission rights.

179 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no
180 notice or knowledge of Conditions Affecting the Property or Transaction (lines xx-xxx) other than those identified in Seller's Real
181 Estate Condition Report dated _____, which was received by Buyer prior to Buyer
182 signing this Offer and which is made a part of this Offer by reference **COMPLETE DATE OR STRIKE AS APPLICABLE** and

183 _____
184 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT**

185 **ADDITIONAL PROVISIONS/CONTINGENCIES**
186 _____
187 _____
188 _____
189 _____
190 _____
191 _____
192 _____

193 **DEFINITIONS CONTINUED FROM PAGE 2**

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

197 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding
198 the day the event occurred and by counting subsequent calendar days. The deadline expires at Midnight on the last day.
199 Additionally, deadlines expressed as a specific number of Business Days are calculated in the same manner except that only
200 Business Days are counted while other days are excluded. Deadlines expressed as a specific number of "hours" from the
201 occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours
202 per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing,
203 expire at Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

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

207 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

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

219 **CAUTION: Exclude any Fixtures to be retained by Seller or which are rented (e.g., water softener or other water
220 treatment systems, L.P. tanks, etc.) on lines xx-xx.**

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

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

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

227 **MAINTENANCE** Seller shall maintain the Property and all personal property included in the purchase price (hereinafter
228 Included Property) until the earlier of closing or Buyer's occupancy, in materially the same condition as of the date of acceptance
229 of this Offer, except for ordinary wear and tear.

230 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged in an amount
231 not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer in writing,
232 and will be obligated to restore the Property to materially the same condition it was in at the date on Line 1 of this Offer. Seller
233 shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than closing. If the amount
234 of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Offer
235 may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to
236 the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the

237 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,
238 any insurance proceeds shall be held in trust for the sole purpose of restoring the Property.

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

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

244 **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written
245 _____ [loan type or specific lender, if any] first mortgage loan commitment as described below, within
246 _____ days of acceptance of this Offer. The financing selected shall be in an amount of not less than \$ _____
247 for a term of not less than _____ years, amortized over not less than _____ years. Initial monthly payments of principal and
248 interest shall not exceed \$ _____. Buyer acknowledges that lender's required monthly payments may also include
249 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums.
250 The mortgage may not include a prepayment premium. Buyer agrees to pay discount points in an amount not to exceed
251 _____% ("0%" if no entry) of the loan.

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

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

256 **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____%.

257 **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed _____%. The initial interest rate shall be
258 fixed for _____ months, at which time the interest rate may be increased not more than _____% (2% if no entry),
259 and by not more than _____% (1% if no entry) a second time and annually thereafter. The maximum interest rate
260 during the mortgage term shall not exceed the initial interest rate plus _____% (6% increase if no entry). Monthly
261 payments of principal and interest may be adjusted to reflect interest changes.

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

264 ■ **BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination
265 fees, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. The Property
266 shall be appraised as required by Buyer's lenders or underwriters. If Buyer qualifies for the loan described in this Offer or another
267 loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at
268 line xxx. **Buyer and Seller agree that Buyer's delivery of a copy of any written loan commitment to Seller (even if subject**
269 **to conditions) shall satisfy Buyer's financing contingency if, after review of the loan commitment, Buyer has directed,**
270 **in writing, delivery of the loan commitment. Seller has no ability to reject a loan commitment unless Seller has added**
271 **standards to this contingency that are not met. This may be signified by Buyer's signature on the loan commitment.**
272 ~~Buyer's written direction shall accompany the loan commitment. Delivery shall not satisfy this contingency if~~
273 ~~accompanied by a notice of unacceptability or if not accompanied by the buyer's written direction/instruction to deliver~~
274 ~~said commitment letter.~~

275 The financing contingency shall be considered satisfied if a copy of the loan commitment is delivered to Seller provided it
276 includes the Buyer's signature, or if the Buyer authorizes delivery of the loan commitment with instructions provided by an email,
277 text, or written direction.

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

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

288 ■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already
289 delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of
290 same including copies of lender(s)' rejection letter(s) or other evidence of unavailability.

291 **SELLER FINANCING:** Seller shall have 10 days from the earlier of (i) Buyer delivery of written notice of evidence of
292 unavailability as noted in lines xxx to xxx or (ii) the deadline for delivery of the loan commitment set on lines xxx to xxx, to deliver
293 to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms set forth
294 in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice
295 is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to cooperate with and

296 authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller
297 financing.

298 **APPRAISAL CONTINGENCY:** This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised
299 at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent
300 to the date stated on line 1 indicating an appraised value for the Property equal to or greater than the agreed upon purchase
301 price. This contingency shall be deemed satisfied unless Buyer, within _____ days ("45" if left blank) of acceptance, delivers
302 to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the agreed upon
303 purchase price, ~~accompanied by a written notice of termination and a Buyer-signed amendment which reduces the purchase~~
304 ~~price to a price not less than the appraised value and includes no other changes, terms or conditions. Seller shall have two days~~
305 ~~to execute and deliver the amendment to Buyer in satisfaction of this contingency. If Seller does not deliver the accepted price~~
306 ~~amendment, Buyer may deliver a notice of termination to Seller and this Offer shall be null and void.~~

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

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

317 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC)
318 provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total
319 Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding
320 applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section
321 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. The Amount
322 Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed
323 by Buyer.

324 Seller (is)(is not) **STRIKE ONE** a foreign person and shall provide a sworn affidavit under penalties of perjury prior to closing
325 confirming this status and furnishing Seller's Social Security number or taxpayer identification number. If Seller is a Foreign
326 Person and Buyer fails to withhold, Buyer may be held liable for the tax.

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

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

336 If Buyer defaults, Seller may:

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

340 If Seller defaults, Buyer may:

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

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

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

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

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

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

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

363 _____, no later than _____ days ("21" if left blank) after acceptance, at (Buyer's)(Seller's)
364 **STRIKE ONE** ("Buyer's" if neither is stricken) expense. Specify any protocols, testing contractors, labs, standards/levels
365 constituting a Defect, financial limits, acceptable repair methodology, etc. that shall be applied: _____

366 _____.
367 The Property shall be returned to its condition prior to the test(s) unless otherwise agreed.
368 This testing contingency shall be deemed satisfied unless Buyer, within five days of the earlier of 1) Buyer's receipt of the testing
369 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 notice
370 identifying the Defect(s) to which Buyer objects (Notice of Defects). For purposes of this Testing Contingency, Defects (as
371 defined in the Offer) do not include structural, mechanical or other conditions that nature and extent of which Buyer had actual
372 knowledge or written notice before signing the Offer.

373 **Right to Cure:** Seller (shall) (shall not) **STRIKE ONE** have the right to cure ("shall" if neither is stricken). If Seller has the right to
374 cure, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of Buyer's delivery of the Notice of Defects
375 to Seller, a written notice stating Seller's election to cure, (2) curing the defects in a Good and Workmanlike Manner and (3)
376 delivering to Buyer a report detailing the work done within three days prior to closing. This Offer shall be null and void if Buyer
377 makes timely delivery of the Notice of Defects and written testing report(s) and (1) Seller does not have the right to cure or (2)
378 Seller has a right to cure but (a) Seller delivers written notice to Buyer stating that Seller will not cure or (b) Seller does not timely
379 deliver written notice of Seller's election to cure. This Offer shall be null and void if Buyer delivers notice to Seller within five
380 days of the delivery deadline stating Seller failed to deliver report(s) by the applicable deadline(s) if Seller was responsible to
381 provide the report(s).

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

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

398 _____ . Seller (shall)(shall
399 not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure. See lines xxx-xxx regarding the Right to Cure.

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

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

417 **NOTE:** Buyer's or Seller's attorney's disapproval may only be based upon the following factors: adequacy of the Property
418 description, sufficiency as to definiteness or enforceability of the Offer, reasonableness and sequence of deadline dates,
419 appropriateness of instrument of conveyance, the nature and extent of title to be transferred to Buyer, and _____
420 _____. Disapproval may not be based upon purchase price, the

421 cost of credits payable by Seller, or the commission agreement between the parties and the **F**irms.
422 A failure of the non-objecting party to accept the proposed amendment, if any, within five days of the objecting party's delivery
423 of the amendment, shall render this Offer null and void. A failure of either Party to timely object to the terms of the Offer and
424 provide a proposed amendment to the terms of the Offer shall be deemed a waiver of this contingency. Both Buyer and Seller
425 agree to pay the cost of their respective attorney's services pertinent to this contingency.

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

432 **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of acceptance that
433 another offer has been accepted. If Buyer does not deliver to Seller: **CHECK AND COMPLETE AS APPLICABLE**
434 Written waiver of Closing of Buyer's Property Contingency
435 Written waiver of Financing Contingency
436 Written waiver Proof of bridge loan financing
437 Proof of ability to close
438 _____ (other – specify)

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

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

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

452 _____
453 _____. If "Time is of the Essence" applies to a date or
454 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
455 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

456 **TITLE EVIDENCE**

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

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

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

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

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

482 ■ PROVISION OF MERCHANTABLE TITLE: For purposes of closing, title evidence shall be acceptable if the required title
483 insurance commitment is delivered to Buyer’s attorney or Buyer no later than _____ days (“15” if left blank) (after
484 acceptance)(prior to closing) [STRIKE ONE] (“after acceptance” if neither is stricken),~~not less than 5 business days before~~
485 ~~closing~~, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable
486 per lines ~~326-335xxx-xxx~~, subject only to liens which will be paid out of the proceeds of closing and standard title insurance
487 requirements and exceptions, as appropriate.

488 ■ TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections
489 to title within five days of delivery of the title commitment to Buyer or Buyer’s attorney by the time set for closing. In such event,
490 Seller shall have a reasonable time, but not exceeding ~~45-~~ _____ days (“five” if left blank) from Buyer’s delivery of the notice stating
491 title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event
492 that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice
493 waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer
494 shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller’s obligations to give
495 merchantable title to Buyer.

496 ■ SPECIAL ASSESSMENTS/OTHER EXPENSES: Special assessments, if any, levied or for work actually commenced prior
497 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.
498 “Levied” means the local municipal governing body has passed and published a final resolution describing the planned
499 improvements and the assessment of benefits.

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

506 **EARNEST MONEY**

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

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

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

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

532 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of
533 this Offer. An “inspection” is defined as an observation of the Property, which does not include an appraisal or testing of the
534 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source,
535 which are hereby authorized. A “test” is defined as the taking of samples of materials such as soils, water, air or building materials
536 from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer’s inspectors, testers and

537 appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer. **Buyer**
538 **and licensees may be present at all inspections and testing.** Except as otherwise provided, Seller's
539 authorization for inspections does not authorize Buyer to conduct testing of the Property.

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

543 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless
544 otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller within
545 _____ days ("four" if left blank) of receipt of each report. Seller acknowledges that certain inspections or tests may detect
546 environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

547 **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines ~~395-409~~xxx-xxx).
548 This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property
549 after the date on line 1 of this Offer which discloses no Defects. This Offer is further contingent upon a qualified independent
550 inspector or independent qualified third party performing an inspection of _____

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

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

558 This contingency shall be deemed satisfied unless Buyer, within _____ days ("20" if left blank) of acceptance, delivers to
559 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 Defect(s)
560 identified in those report(s) to which Buyer objects (Notice of Defects).

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

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

564 **RIGHT TO CURE:** Seller (shall)(shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure the Defects. If Seller
565 has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within seven days of Buyer's
566 delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike
567 manner; and (3) delivering to Buyer a written report detailing the work done at least three days prior to closing. This Offer shall
568 be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not
569 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
570 does not timely deliver the written notice of election to cure.

571 **ADDENDA:** The attached _____ is/are made part of this Offer.

572 **ADDITIONAL PROVISIONS/CONTINGENCIES** _____

573 _____
574 _____
575 _____
576 _____
577 _____
578 _____
579 _____

580 This Offer was drafted by [Licensee and Firm] _____

581 _____

582 (x) _____
583 Buyer's Signature ▲ Print Name Here ► Date ▲

584 (x) _____
585 Buyer's Signature ▲ Print Name Here ► Date ▲

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

587 Firm: _____ Signature of Agent for the Firm: _____

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

591 (x) _____
592 Seller's Signature ▲ Print Name Here ► Date ▲

593 (x) _____
594 Seller's Signature ▲ Print Name Here ► _____ Date ▲ _____
595 This Offer was presented to Seller by [Licensee and Firm] _____
596 _____ on _____ at _____ a.m./p.m.
597 This Offer is rejected _____ This Offer is countered [See attached counter] _____
598 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲