



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room N208, 4822 Madison Yards Way, Madison
Contact: Erin Karow (608) 266-2112
October 26, 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 September 12, 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 (3-35)**
 - a) Review of Proposed Revisions and Memo
 - b) Original Document
 - c) Proposed Revisions to Offer to Purchase Forms – Balance of Purchase Price
 - d) Proposed Revisions to Foreign Investment in Real Property Tax Act (FIRPTA) Provision
- E. Public Comments**

ADJOURNMENT

NEXT SCHEDULED MEETING: DECEMBER 5, 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
SEPTEMBER 12, 2018**

PRESENT: Joseph Busch (*arrived at 9:57 a.m.*), Casey Clickner, Debra Conrad, John Drzewiecki, Michael Gordon, Cori Lamont, Kim Moermond, Jonathan Sayas, Thomas Weber, Jr., Robert Webster, and Pamela Widen

EXCUSED: Richard Marino, Laura Peck, Gary Tritz

STAFF: Erin Karow, Executive Director; Kate Stolarzyk, Bureau Assistant

CALL TO ORDER

Robert Webster called the meeting to order at 9:44 a.m. A quorum of ten (10) members was confirmed.

ADOPTION OF AGENDA

MOTION: Michael Gordon moved, seconded by John Drzweicki, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES FROM AUGUST 6, 2018

MOTION: Cori Lamont moved, seconded by Casey Clickner, to approve the minutes of August 6, 2018 as published. Motion carried unanimously.

ADJOURNMENT

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

The meeting adjourned at 2:03 p.m.

WB-11 RESIDENTIAL OFFER TO PURCHASE

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

3 **GENERAL PROVISIONS** The Buyer, _____
4 _____, offers to purchase the Property known as [Street Address] _____
5 _____ in the _____
6 of _____, County of _____ Wisconsin (insert 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 until the earlier of
228 closing or Buyer's occupancy, in materially the same condition as of the date of acceptance of this Offer, except for ordinary
229 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. If Buyer is using multiple loan sources or obtaining a construction loan or land contract
252 financing, describe at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx. Buyer agrees to pay all customary loan
253 and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of
254 application promptly upon request of Seller. Seller agrees to allow lender's appraiser access to the Property.

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

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

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

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

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

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

270 ■ ~~SATISFACTION OF FINANCING COMMITMENT CONTINGENCY: If Buyer qualifies for the loan described in this Offer or
271 another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment. This contingency shall
272 be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment (even if subject to conditions)
273 that is: (1) signed by Buyer; or, (2) accompanied by Buyer's written direction for delivery. Delivery of a loan commitment by
274 Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy this contingency.~~

275 ~~Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy
276 of the written loan commitment no later than the deadline at line xxx. Buyer and Seller agree that delivery of a copy of any
277 written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after
278 review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Seller has no ability
279 to reject a loan commitment unless Seller has added standards to this contingency that are not met. This may be
280 signified by Buyer's signature on the loan commitment. Buyer's written direction shall accompany the loan
281 commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability. Delivery of the
282 loan commitment by Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy this
283 contingency.~~

284 ~~or if not accompanied by the buyer's written direction/instruction to deliver said commitment letter.~~

285 **CAUTION:** The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to
286 provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment Contingency
287 from the Offer and shifts the risk to Buyer if the loan is not funded.

288 ~~BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SUBAGENTS SHALL NOT DELIVER A LOAN
289 COMMITMENT TO SELLER OR SELLER'S AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS
290 ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY. Buyer understands delivery of the loan commitment removes
291 the Financing Commitment Contingency from the Offer and shifts the risk to Buyer if the loan is not funded.~~

292 ■ **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said a loan commitment on or before the
293 Deadline on line xxx, Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Buyer's
294 Seller's Actual Receipt/delivery of a copy of Buyer's written loan commitment to Seller, and Buyer's written delivery directions. In
295 the event Seller delivers to Buyer a written notice of termination, Buyer will have the right to cure the breach by delivering the
296 written loan commitment and delivery directions to seller within _____ hours ("24" if left blank) of Seller's delivery of the notice of

297 ~~termination. Seller has no ability to reject a loan commitment unless Seller has added standards to this contingency that are not~~
298 ~~met.~~

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

302 **SELLER FINANCING:** Seller shall have 10 days from the earlier of (i) Buyer delivery of written notice of evidence of
303 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
304 to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms set forth
305 in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice
306 is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to cooperate with and
307 authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller
308 financing.

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

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

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

328 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC)
329 provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total
330 Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding
331 applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section
332 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. The Amount
333 Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed
334 by Buyer.

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

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

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

347 If Buyer defaults, Seller may:

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

351 If Seller defaults, Buyer may:

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

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

355 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the
356 discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution

357 instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of
358 law those disputes covered by the arbitration agreement.

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

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

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

370 **TESTING CONTINGENCY:** This Offer is contingent upon (Buyer obtaining)(Seller providing) **STRIKE ONE** ("Buyer
371 obtaining" if neither is stricken) a current written report from a qualified independent expert documenting the results of the
372 following test(s) conducted pursuant to applicable government or industry protocols and standards and which indicate no unsafe
373 levels of (indicate substances or compounds to be tested, e.g., radon, asbestos, etc.): _____
374 _____, no later than _____ days ("21" days if left blank) after acceptance, at (Buyer's)(Seller's)
375 **STRIKE ONE** ("Buyer's" if neither is stricken) expense. Specify any protocols, testing contractors, labs, standards/levels
376 constituting a Defect, financial limits, acceptable repair methodology, etc. that shall be applied: _____
377 _____.

378 The Property shall be returned to its condition prior to the test(s) unless otherwise agreed.

379 This testing contingency shall be deemed satisfied unless Buyer, within five days of the earlier of 1) Buyer's receipt of the testing
380 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
381 identifying the Defect(s) to which Buyer objects (Notice of Defects). For purposes of this Testing Contingency, Defects (as
382 defined in the Offer) do not include structural, mechanical or other conditions that nature and extent of which Buyer had actual
383 knowledge or written notice before signing the Offer.

384 **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
385 cure, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of Buyer's delivery of the Notice of Defects
386 to Seller, a written notice stating Seller's election to cure, (2) curing the defects in a Good and Workmanlike Manner and (3)
387 delivering to Buyer a report detailing the work done within three days prior to closing. This Offer shall be null and void if Buyer
388 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)
389 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
390 deliver written notice of Seller's election to cure. This Offer shall be null and void if Buyer delivers notice to Seller within five
391 days of the delivery deadline stating Seller failed to deliver report(s) by the applicable deadline(s) if Seller was responsible to
392 provide the report(s).

393 **RADON TESTING CONTINGENCY:** This Offer is contingent upon (Buyer obtaining)(Seller providing) **STRIKE ONE**
394 ("Seller providing" if neither is stricken) a current written report, within _____ days of acceptance, documenting the results of a
395 radon gas test on the Property, conducted by a professional testing service or contractor qualified to perform radon testing.
396 Testing must be conducted consistent with Environmental Protection Agency (EPA) guidelines.

397 **Right to Cure:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to remediate. If the test results
398 indicate a radon gas level at or above 4.0 picoCuries per liter (pCi/L), Buyer may deliver to Seller a notice objecting to the level
399 of radon, along with a copy of the test results. This Offer shall be considered terminated, effective upon delivery of said notice
400 and test results, unless Seller has the right to remediate.

401 If Seller has the right to remediate, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of receipt of
402 the test results, a written notice of Seller's election to remediate, (2) hiring a certified radon mitigation contractor to install an
403 active fan-based radon mitigation system to lower the radon gas level on the property to below 4.0 pCi/L, (3) securing Buyer's
404 written approval of the radon mitigation system location and venting, and (4) providing a re-test report to Buyer after installation
405 of remediation system, confirming a radon gas level below 4.0 pCi/L, no later than three days prior to closing. Any re-test shall
406 be performed by, or under the supervision of, a professional testing service or certified radon measurement contractor. This
407 Offer shall be terminated if Buyer submits the test results and a notice objecting to the radon levels identified in the test results
408 and Seller has the option to remediate, but the Seller either elects not to remediate, or fails to elect to remediate. If Seller was
409 responsible to provide the radon test report, this Offer shall be null and void if Buyer delivers notice to Seller, within five days of
410 the deadline for delivery of the report, stating Seller failed to deliver the report by the stated deadline.

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

418 ■ **CONTINGENCY SATISFACTION/RIGHT TO CURE:** This contingency shall be deemed satisfied unless Buyer within five
419 days of the deadline for delivery of said report delivers to Seller a copy of the written report and written notice stating why the
420 report does not satisfy the contingency standard. If Seller has the right to cure, Seller may satisfy this contingency by (1)
421 delivering a written notice of Seller's election to cure within seven days of receipt of Buyer's notice; (2) and by curing the defects
422 in a good and workmanlike manner and by giving Buyer a report of the work done three days prior to closing. This Offer shall
423 be null and void if Buyer timely delivers the above written notice and report to Seller and (1) Seller does not have the right to
424 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
425 deliver the notice of election to cure. If Seller was responsible to provide the report, this Offer shall be null and void if Buyer
426 delivers notice to Seller within three days of the delivery deadline stating Seller failed to deliver the report.

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

433 **NOTE:** Buyer's or Seller's attorney's disapproval may only be based upon the following factors: adequacy of the Property
434 description, sufficiency as to definiteness or enforceability of the Offer, reasonableness and sequence of deadline dates,
435 appropriateness of instrument of conveyance, the nature and extent of title to be transferred to Buyer, and _____
436 _____. Disapproval may not be based upon purchase price, the
437 cost of credits payable by Seller, or the commission agreement between the parties and the Firms.

438 A failure of the non-objecting party to accept the proposed amendment, if any, within five days of the objecting party's delivery
439 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
440 provide a proposed amendment to the terms of the Offer shall be deemed a waiver of this contingency. Both Buyer and Seller
441 agree to pay the cost of their respective attorney's services pertinent to this contingency.

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

448 **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer ~~of acceptance that~~
449 ~~another offer has been accepted.~~ If Buyer does not deliver to Seller written waiver of the Closing of Buyer's Property Contingency
450 and: **CHECK AND COMPLETE AS APPLICABLE**

451 Written waiver of Financing Contingency

452 ~~Written waiver~~Proof of bridge loan financing

453 Proof of ability to close

454 _____ (other – specify)

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

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

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

468 _____
469 _____. If "Time is of the Essence" applies to a date or
470 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
471 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

472 **TITLE EVIDENCE**

473 ■ **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed
474 (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as provided
475 herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under
476 them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and
477 covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in

478 this Offer [this issue has been referred to the Wisconsin Land title Association and all of their smart attorneys and they will get
479 back to us with a recommendation]. general taxes levied in the year of closing and _____

480 _____
481 _____
482 _____

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

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

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

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

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

504 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections
505 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,
506 Seller shall have a reasonable time, but not exceeding ~~45-_____~~ days ("five" if left blank) from Buyer's delivery of the notice stating
507 title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event
508 that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice
509 waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer
510 shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give
511 merchantable title to Buyer.

512 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior
513 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.
514 "Levied" means the local municipal governing body has passed and published a final resolution describing the planned
515 improvements and the assessment of benefits.

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

522 **EARNEST MONEY**

523 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-12 and held in
524 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
525 as designated on line 12), until applied to the purchase price or otherwise disbursed as provided in the Offer.

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

529 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after
530 clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money.
531 At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money
532 shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement
533 agreement has not been delivered to the Ffirm holding the earnest money within 60 days after the date set for closing, that Ffirm
534 may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer
535 or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court
536 order; or (4) any other disbursement required or allowed by law. The Ffirm may retain legal services to direct disbursement per

537 (1) or to file an interpleader action per (2) and the Ffirm may deduct from the earnest money any costs and reasonable attorneys' 538 fees, not to exceed \$750, prior to disbursement.

539 ■ **LEGAL RIGHTS/ACTION:** The Ffirm's disbursement of earnest money does not determine the legal rights of the Parties in 540 relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Ffirm holding the earnest 541 money. At least 30 days prior to disbursement per (1) or (4) above, the Ffirm shall send Buyer and Seller notice of the 542 disbursement by certified mail. If Buyer or Seller disagree with the Ffirm's proposed disbursement, a lawsuit may be filed to 543 obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of 544 the sale of residential property with one-to-four dwelling units and certain other earnest money disputes. Buyer and Seller should 545 consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the 546 Ffirm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable 547 Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

548 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of 549 this Offer. An "inspection" is defined as an observation of the Property, which does not include an appraisal or testing of the 550 Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, 551 which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials 552 from the Property and the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors, testers and 553 appraisers reasonable access to the Property upon advance notice, if necessary to satisfy the contingencies in this Offer. Buyer 554 and licensees may be present at all inspections and testing. Except as otherwise provided, Seller's 555 authorization for inspections does not authorize Buyer to conduct testing of the Property.

556 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the** 557 **test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other** 558 **material terms of the contingency.**

559 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless 560 otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller within 561 _____ days ("four" if left blank) of receipt of each report. Seller acknowledges that certain inspections or tests may detect 562 environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

563 **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 395-409xxx-xxx). 564 This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property 565 after the date on line 1 of this Offer which discloses no Defects. This Offer is further contingent upon a qualified independent 566 inspector or independent qualified third party performing an inspection of _____ (list any Property component(s) 567 _____ (list any Property component(s) 568 to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects. Buyer shall order 569 the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections recommended in a 570 written report resulting from an authorized inspection, provided they occur prior to the deadline specified at line xxx. Inspection(s) 571 shall be performed by a qualified independent inspector or independent qualified third party.

572 **CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well** 573 **as any follow-up inspection(s).**

574 This contingency shall be deemed satisfied unless Buyer, within _____ days ("20" if left blank) of acceptance, delivers to 575 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) 576 identified in those report(s) to which Buyer objects (Notice of Defects).

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

578 For the purposes of this contingency, Defects (see lines xxx-xxx) do not include structural, mechanical or other conditions the 579 nature and extent of which Buyer had actual knowledge or written notice before signing this Offer (lines xxx-xxx).

580 ■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects. If Seller 581 has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within seven days of Buyer's 582 delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike 583 manner; and (3) delivering to Buyer a written report detailing the work done at least three days prior to closing. This Offer shall 584 be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not 585 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 586 does not timely deliver the written notice of election to cure.

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

588 **ADDITIONAL PROVISIONS/CONTINGENCIES** _____

589 _____
590 _____
591 _____
592 _____
593 _____
594 _____
595 _____

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

597 _____.

598 (x) _____

599 Buyer's Signature ▲ Print Name Here ► _____ Date ▲ _____

600 (x) _____

601 Buyer's Signature ▲ Print Name Here ► _____ Date ▲ _____

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

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

604 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER**

605 **SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON**

606 **THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**

607 (x) _____

608 Seller's Signature ▲ Print Name Here ► _____ Date ▲ _____

609 (x) _____

610 Seller's Signature ▲ Print Name Here ► _____ Date ▲ _____

611 This Offer was presented to Seller by [Licensee and Firm] _____

612 _____ on _____ at _____ a.m./p.m.

613 This Offer is rejected _____ This Offer is countered [See attached counter] _____

614 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

OFFER TO PURCHASE REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Staff

Date: October 16, 2018

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

The 20180912WB-11WithTrackingDSPSwra draft that accompanies this memo shows the result of the discussions of the DSPS Real Estate Contractual Forms Advisory Committee on September 12 and the WRA Forms Committee on September 27 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.

For this memo we are going to try to remove provisions we have discussed earlier where there was agreement between the two committees in order to shorten this up a bit.

WB-11 Residential Offer to Purchase

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.

➤ The DSPS Committee made it an “assignment” to fashion a new definition of “Actual Receipt” that addresses what it means to have a document or notice in a party’s possession if it was emailed: does it mean it has been received only or does it also mean it has been opened. The assumption is that computers/document platforms can determine and readily provide this information. See below – do we have suggestions?

■ ACTUAL RECEIPT: “Actual Receipt” means that a Party, not the Party’s recipient for delivery, if any, has the document or written notice physically in the Party’s possession, ~~regardless of the method of delivery or the email transmitting the document has been received and opened – or ???~~.

Wis. Stat. § 137.23 Time and place of sending and receipt.

(1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) applies even if the place where the information processing system is located is different from the place where the electronic record is deemed to be received under sub. (4).

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection:

(a) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under sub. (2) even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in sub. (2) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under sub. (1), or purportedly received under sub. (2), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

➤ The WRA Forms Committee made several observations on this issue:

◆ One can prove when a document is sent but not when it was forwarded to the party

- ◆ There is a growing trend for transaction coordinators to not work on weekends, so language is being added to contracts that no delivery on weekends
 - ◆ Actual receipt relies on the party's admission
 - ◆ Opening an email does not necessarily mean you can open the attachment
 - ◆ Drop box attachments make people leery of scams and fraud – virus, etc.
 - ◆ If send a notice asking for a receipt the recipient has the ability to block such requests
 - ◆ Should the standard be receipt by the party, in accordance with § 137.23?
- **What does the DSPS Committee think should be done with the definition of Actual Receipt?**

Financing Commitment Contingency overall – Lines 243-301

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

Financing Contingency – Satisfaction of Financing Commitment Contingency – Lines 270-291:

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 that had been shown in the draft was to allow the buyer to satisfy this requirement by simply signing the loan commitment.

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 something to the effect of "or if not accompanied by the buyer's written direction/instruction to deliver said C letter".

This had been shown in the draft but was eliminated by the DSPS Committee:

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.

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.

- **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.

The following (in tracking in the draft and without tracking below) is where the DSPS Real Estate Contractual Forms Advisory Committee left off in their discussions on September 12. They ultimately decided that delivery of a loan commitment based on the buyer's signature on the commitment was adequate authorization for delivery (split vote, not consensus). Several provisions were shifted and there was a reorganization of the language.

Lines 243-291:

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

FINANCING COMMITMENT CONTINGENCY: This Offer is contingent upon Buyer being able to obtain a written _____ [loan type or specific lender, if any] first mortgage loan commitment as described below, within ____ days of acceptance of this Offer. The financing selected shall be in an amount of not less than \$ _____ for a term of not less than _____ years, amortized over not less than _____ years. Initial monthly payments of principal and interest shall not exceed \$ _____. 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. The mortgage ~~may~~ shall not include a prepayment premium. Buyer agrees to pay discount points in an amount not to exceed _____% ("0%" if no entry) of the loan. If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx. 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. Seller agrees to allow lender's appraiser access to the Property.

■ **LOAN AMOUNT ADJUSTMENT:** If the purchase price under this Offer is modified, 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.

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 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.

■ **SATISFACTION OF FINANCING COMMITMENT CONTINGENCY:** 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 a written loan commitment. This contingency shall be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment (even if subject to conditions) that is: (1) signed by Buyer; or, (2) accompanied by

Buyer's written direction for delivery. Delivery of a loan commitment by Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy this contingency.

CAUTION: The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment Contingency from the Offer and shifts the risk to Buyer if the loan is not funded.

- **The WRA Forms Committee was satisfied with the above passage with the one correction shown in tracking. Does the DSPS Committee agree this is their final word?**

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

Lines 285-286– 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.

Line 274 uses 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. Committees have decided to leave it undefined after trying to come up with a definition.

Financing Contingency – Seller Termination Rights – Lines 292-298

Here we find an instance of the Actual Receipt standard. The DSPS Real Estate Contractual Forms Advisory Committee also made the following change, adding the reference to the deadline. It is expected that the reference to Buyer's delivery directions will be removed or modified to also refer to a buyer's signature on the commitment.

- **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the **Deadline on line xxx**, 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 Committee was in favor of not including the Actual Receipt standard in this provision and proposed a delivery standard something like this:

- **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the **Deadline on line xxx**, Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to **Actual Receipt** ~~Buyer's delivery~~ of a copy of Buyer's written loan commitment ~~and Buyer's written delivery direction to Seller.~~

The DSPS Committee adopted the following:

- **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the Deadline on line xxx, Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to **Buyer's delivery** of written loan commitment to Seller.

The WRA Forms Committee suggested the following based on the consistent use of language:

- **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the Deadline on line xxx, Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to **Buyer's delivery to Seller** of **a copy of Buyer's** written loan commitment ~~to Seller.~~

➤ **Does the DSPS Forms Committee agree?**

There also was preliminary discussion of using a standard of direct delivery to a party in place of Actual Receipt, with the thought that the electronic platforms can determine when a message is received and opened. This would mean that the party's email addresses would become known to the agents.

Appraisal Contingency – Lines 309-319:

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.

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 timely deliver the accepted price amendment, ~~Buyer may deliver a notice of termination to Seller and this Offer shall be null and void. this Offer shall be null and void. (now shown in the draft)~~
CAUTION: An appraisal ordered by Buyer's lender may not be received until shortly before closing. Consider whether deadlines provide adequate time for performance.

The DSPS Committee wants there to be a choice as to whether there will be a right to cure.

APPRAISAL CONTINGENCY: 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 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.

■ **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** (“shall” if neither is stricken) have a right to cure. If Seller has the right to cure, Buyer shall also deliver to Seller, along with the copy of the appraisal report, 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 timely deliver the accepted price amendment, this Offer shall be null and void. If Seller does not have the right to cure, Buyer shall deliver to Seller, along with the copy of the appraisal report, a written notice of termination and this Offer shall be null and void with any earnest money returned to Buyer.

➤ **The WRA Forms Committee finds this acceptable. Does the DSPS Forms Committee agree or are there other suggestions and ideas?**

Request for FIRPTA Provision – Lines 328-337

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.

If Seller ~~(is)(is not)~~ ~~STRIKE ONE~~ a foreign person, ~~and Seller~~ 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 DSPS made the modifications shown above in tracking.**

The WRA Forms Committee suggested the following to provide more protection for the buyer:

Seller ~~warrants and represents Seller~~ (is)(is not) ~~STRIKE ONE~~ (“is not” if neither is stricken) a foreign person. ~~If Seller (is)(is not)~~ ~~STRIKE ONE~~ a foreign person, ~~and Seller~~ 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.

Another new suggestion for review from Arizona:

FOREIGN SELLERS: The Foreign Investment in Real Property Tax Act (“FIRPTA”) is applicable if Seller is a non-resident alien individual, foreign corporation, foreign partnership, foreign trust or foreign estate (“Foreign Person”). Seller agrees to complete, sign, and deliver to Escrow Company a certificate indicating whether Seller is a Foreign Person. FIRPTA requires that a foreign seller may have federal income taxes up to 15% of the purchase price withheld, unless an exception applies. Seller is responsible for obtaining independent legal and tax advice.

➤ **Does the DSPS Forms Committee like any of these or are there other suggestions and ideas?**

Testing Contingencies

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 416-418.
- ◆ It was pointed out that a floating deadline is difficult to work with. There is an example in the draft at lines 408-410: “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.

RADON TESTING CONTINGENCY

At the August 9 meeting of the WRA Forms Committee, the group worked on a radon testing contingency (gray highlighted in draft, lines 393-410).

RADON TESTING CONTINGENCY: 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. Testing must be conducted consistent with Environmental Protection Agency (EPA) guidelines.

Right to Cure: Seller (shall)(shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have the right to remediate. If the test results indicate a radon gas level at or above 4.0 picoCuries per liter (pCi/L), Buyer may deliver to Seller a notice objecting to the level of radon, along with a copy of the test results. 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 10 days of receipt of the test results, a written notice of Seller's election to remediate, (2) hiring a certified radon mitigation contractor to install an active fan-based radon mitigation system to lower the radon gas level on the property to below 4.0 pCi/L, (3) securing Buyer's written approval of the radon mitigation system location and venting, and (4) providing a re-test report to Buyer after installation of remediation system, confirming a radon gas level below 4.0 pCi/L, no later than three days prior to closing. Any re-test shall be performed by, or under

the supervision of, a professional testing service or certified radon measurement contractor. This Offer shall 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. If Seller was responsible to provide the radon test report, this Offer shall be null and void if Buyer delivers notice to Seller, within five days of the deadline for delivery of the report, stating Seller failed to deliver the report by the stated deadline.

➤ **The DSPS Committee thought this was too detailed and wanted something more vanilla.**

The WRA Forms Committee thought that if a very basic contingency is placed in the offer that everyone will still use addenda because they will want to add in details or features. There also was discussion about whether how much choice to give the buyer if the seller was paying, whether the buyer should pay for radon testing as in the GMAR Addendum A (as the default) and whether the buyer should be able to choose location if the seller pays for mitigation. They suggested breaking out the details in the contingency above, after adding timeframes that were missing in the first draft and make them check boxes, as shown below.

RADON TESTING CONTINGENCY: This Offer is contingent upon (Buyer obtaining)(Seller providing) ~~STRIKE ONE~~ (“Buyer obtaining” 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 an independent third party contractor qualified to perform radon testing. Testing must be conducted consistent with Environmental Protection Agency (EPA) and Wisconsin Department of Health Services (DHS) protocols at (Buyer’s)(Seller’s) ~~STRIKE ONE~~ (“Buyer’s” if neither is stricken) expense. If the test results indicate a radon gas level at or above 4.0 picoCuries per liter (pCi/L), Buyer may deliver to Seller written notice objecting to the radon level and a copy of the test results. This Offer shall be terminated, effective upon delivery of said notice and test results, unless Seller has the right to cure.

Right to Cure: Seller (shall)(shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have the right to cure. If Seller has the right to cure, Seller may satisfy this contingency by Delivering to Buyer, within __ days (“seven” if none indicated) of delivery of Buyers’ notice and the test results, a written notice of Seller’s election to cure ~~CHECK~~ **AND COMPLETE AS APPLICABLE** and:

Curing the defects in a good and workmanlike manner and by giving Buyer a written report of the work done three days prior to closing.

Hiring a certified radon mitigation contractor to implement radon mitigation measures to lower the radon gas level on the property to below 4.0 pCi/L and giving Buyer a written report of the work done three days prior to closing.

Hiring a certified radon mitigation contractor to install an active fan-based radon mitigation system to lower the radon gas level on the property to below 4.0 pCi/L and giving Buyer a written report of the work done three days prior to closing.

Obtaining Buyer’s written approval of the radon mitigation system location and venting within __ days (“10” if none indicated) of delivery of Buyers’ notice and the test results. Seller may select location and venting if Buyer fails to provide approval.

Providing a re-test report to Buyer after installation of a remediation system, confirming a radon gas level below 4.0 pCi/L, no later than three days prior to closing. Any re-test shall be conducted by an independent third party contractor qualified to perform radon testing.

(Buyer)(Seller)(Buyer and Seller equally) ~~STRIKE TWO~~ (“Buyer” if none is stricken) is responsible for the cost of radon mitigation in excess \$_____.

This Offer shall be terminated if Buyer submits the test results and notice objecting to the radon levels and Seller has the right to cure, but Seller either delivers written notice that Seller will not cure or does not timely deliver notice of Seller’s election to cure. If Seller was responsible to provide the radon test report, this Offer shall be null and void if Buyer delivers notice to Seller, within five days of the deadline for the report, stating Seller failed to provide the report by the stated deadline.

➤ **Does the DSPS Forms Committee like this concept or are there other suggestions and ideas?**

Below is a very basic radon testing contingency (yellow highlights in the draft, lines 411-426):

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

■ **CONTINGENCY SATISFACTION/RIGHT TO CURE:** This contingency shall be deemed satisfied unless Buyer within five days of the deadline for delivery of said report delivers to Seller a copy of the written report and written notice stating why the report does not satisfy the contingency standard. If Seller has the right to cure, Seller may satisfy this contingency by (1) delivering a written notice of Seller's election to cure within seven days of receipt of Buyer's notice; (2) and by curing the defects in a good and workmanlike manner and by giving Buyer a report of the work done three days prior to closing. This Offer shall be null and void if Buyer timely delivers the above written notice and report 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 notice that Seller will not cure or b) Seller does not timely deliver the notice of election to cure. If Seller was responsible to provide the report, this Offer shall be null and void if Buyer delivers notice to Seller within three days of the delivery deadline stating Seller failed to deliver the report.

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

The DSPS Committee also wanted to see the RANW Radon Testing Contingency for discussion purposes:

RADON TESTING CONTINGENCY Caution: Only check one of the boxes at line xxx or line xxx; do **NOT** select both.

This Offer is contingent upon Buyer, at Buyer's expense, obtaining a radon test performed and written report provided by a "qualified third party" consistent with applicable government or industry protocols and standards. If Buyer fails to deliver a copy of the radon test report to Seller within the timeline described below, or if the radon test report indicates the level of radon is less than 4 picoCuries per liter (using the EPA Protocol Average if stated on the report), this contingency shall be deemed satisfied.

If Buyer, within _____ days of acceptance, delivers to Seller a written copy of radon test report with results indicating a level of radon of 4.0 picoCuries per liter or more, the Parties hereby agree that Seller will permit a radon mitigation system to be installed prior to closing, and **(Buyer) (Seller) ~~STRIKE ONE~~** ("Buyer" if neither is stricken) shall select: (1) a qualified mitigation contractor who will install an active radon mitigation system, consistent with EPA standards, prior to closing and provide the Parties, using same standards as above, with a written test report showing radon level of less than 4.0 picoCuries per liter; and (2) the location of the radon mitigation vent piping: **[Choose one of the two (2) following boxes below]**

(Buyer) (Seller) ~~STRIKE ONE~~ ("Buyer" if neither is stricken) is responsible for the total cost of radon mitigation, expense not to exceed \$_____ total.

Buyer and Seller to equally share responsibilities for the total cost of radon mitigation not to exceed \$_____ in total.

If total repair estimate exceeds the amount specified, the Party(ies) responsible for the repair expense may terminate this Offer by delivering written notice of the total repair estimate to the other Party, unless the other Party, within 3 days of receipt of written notice, agrees to pay for the excess amount by delivering a written notice to the Party responsible for repair expenses.

If Buyer, within _____ days of acceptance, delivers to Seller a copy of the radon report with results indicating the level of radon is 4 picoCuries per liter or more, this Offer shall be null and void. (If the box at line xx and the box at line xx are both marked the box at line xx shall prevail.)

CAUTION: When the Seller is providing Buyer with a radon warranty from a qualified independent company (which is sometimes provided if Seller is a relocation company) that includes a radon test

and a mitigation system (mitigation system provided if the test results are 4 picoCuries per liter or more), Buyer should use the radon testing contingency above ONLY if Buyer wants to have a radon testing contingency in addition to the radon warranty plan provided by Seller.

The WRA Forms Committee was not fond of the caps on the cost in this provision.

- **Are there other suggestions and ideas?**

General Testing Contingency, lines 370-392

- **The WRA Forms Committee was not sure whether a general testing contingency should be included, and if so, whether it would be included instead of radon testing.**

Other options:

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.

- **Should there be a general testing contingency in the offer? Are there other suggestions and ideas?**

Attorney Approval Contingency – Lines 427-441:

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.

Another variation was suggested by a committee member:

ATTORNEY REVIEW: Within five business days after the date of acceptance, the attorneys for the respective parties, by notice, may:

- a) Disapprove this contract
- b) Disapprove this contract, which disapproval shall not be based solely upon the purchase price; or
- c) Propose modifications except for the purchase price. If within 10 business days after the date of acceptance written agreement is not reached by the parties with respect to resolution of the proposed modifications, then either party may terminate this contract by serving notice, whereupon this contract shall be null and void; or
- d) Propose suggested changes to this contract. If such suggestions are not agreed upon, neither Party may declare this contract null and void and this contract shall remain in full force and effect.

Unless otherwise specified, all notices shall be deemed made pursuant to paragraph 11 c). If notice is not served within the time specified herein, the provisions of this paragraph shall be deemed waived by the Parties and this contract shall remain in full force and effect.

- **Should there be an attorney approval contingency in the offer? Are there other suggestions and ideas?**

Closing of Buyer's Property Contingency – Lines 442-447:

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 448-458

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 written waiver of the Closing of Buyer's Property Contingency and: **CHECK AND COMPLETE AS APPLICABLE**

- Written waiver of Financing Contingency
- 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, PROVIDING EVIDENCE OF SALE, 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 459-464:

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.

Priority Over All Other Secondary Offers

Buyer is aware this is a secondary offer. In the event the primary buyer cannot meet the offer terms, and upon written notice from Seller to Buyer hereunder, this Offer shall become the primary offer. Seller agrees not to grant any extensions or modifications to primary buyer after acceptance of this Offer. Seller shall not have the right to consider this secondary offer subordinate to any other secondary offer. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller at any time prior to delivery of Seller’s notice this Offer is primary. Buyer may not deliver notice of withdrawal earlier than ___ days (“10” if left blank) after acceptance of this Offer. Offer deadlines, other than deadlines in this secondary offer provision and for payment of earnest money, measured from acceptance shall be measured from the time this Offer becomes primary.

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

Title Evidence section – Lines 472-511:

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),~~losing,~~ showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 326-335xxx-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 512-521:

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 529-538:

A proposed suggestion – starting at line 520:

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 513 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 527 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 548-562:

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 542-543: 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 563-586:

Note the insertion of the word “independent” on line 564 and a default timeframe of 20 days on line 574. 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 581 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.

Interconnection between home inspection and testing- one possibility

Some brokers have been using provisions providing 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. Would that be desirable? If there is a testing contingency in the offer the testing contingency could be completed, for example, as shown below.

August 9: The WRA Forms Committee discussed this and felt that any such provisions should be countered out. The seller should have the ability to consider and negotiate appropriate parameters for testing and restoration if they will allow testing – this should be done in an amendment if the testing was not agreed to in the original offer.

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

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

Then the Inspection Contingency could be modified by adding:

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

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

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

INSPECTION AND TESTING DEADLINE EXTENSIONS: The Parties agree to extend the deadlines for any Inspection Contingency and any Testing Contingency in this Offer for 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.

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 602-603:

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-11RevisionDSPS10-26-18

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Erin Karow, Executive Director on behalf of Kim Moermond		2) Date When Request Submitted: 10/17/2018 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Real Estate Contractual Forms Advisory Council			
4) Meeting Date: 10/26/2018	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? D. Review of Real Estate Contractual Forms for Revision 1) WB-11- Residential Offer to Purchase d) Proposed Revisions to FIRPTA Provision	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: None	
10) Describe the issue and action that should be addressed: The Council will discuss and consider the following revision proposed by Kim Moermond to include in the WB-11 Residential Offer to Purchase form: FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA): Section 1445 of the Internal Revenue Code (IRC) applies to certain transactions where the Seller is a "Foreign Person," who under that law 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, and requires the Seller to pay or 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. CAUTION: Under this law if Seller is a Foreign Person, but does not pay or withhold the tax amount, the Buyer may be held directly liable by the United States Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property. Seller agrees to provide a sworn affidavit, or equivalent document, under penalty of perjury, prior to closing confirming whether or not Seller is a Foreign Person and furnish identification as necessary to any closing entity to confirm same, and Seller agrees to pay or cause to be withheld at closing the amount, if any, as may be required under FIRPTA. Firms or real estate agents are not responsible for determining whether FIRPTA applies. The parties may wish to consult independent legal counsel or tax advisors.			
11) Authorization			
<i>Erin Karow</i>		10/17/2018	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	

**State of Wisconsin
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Directions for including supporting documents:

1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director.
3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.