



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room N208, 4822 Madison Yards Way, 2nd Floor, Madison, WI 53705
Contact: Erin Karow (608) 266-2112
December 5, 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 October 26, 2018 (2-3)**
- 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**
 - a. Review of Proposed Revisions and Memo **(4-23)**
 - b. Proposed Revisions to Offer to Purchase Forms – Balance of Purchase Price **(24-34)**
 - c. Proposed Revisions to Foreign Investment in Real Property Tax Act (FIRPTA) Provision **(35)**
- E. Public Comments**

ADJOURNMENT

NEXT SCHEDULED MEETING: JANUARY 23, 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
OCTOBER 26, 2018**

PRESENT: Debra Conrad, John Drzewiecki, Michael Gordon (*left at 2:17 p.m. and reconnected via teleconference at 2:21 p.m.*), Richard Marino, Kim Moermond, Laura Peck, Jonathan Sayas, Thomas Weber, Jr.

EXCUSED: Joseph Busch, Casey Clickner, Cori Lamont, Gary Tritz, Robert Webster and Pamela Widen

STAFF: Erin Karow, Executive Director; Kate Stolarzyk, Bureau Assistant; and other DSPS Staff

CALL TO ORDER

Richard Marino, Chair, called the meeting to order at 10:52 a.m. A quorum of eight (8) members was confirmed.

ADOPTION OF AGENDA

MOTION: John Drzewiecki moved, seconded by Laura Peck, to adopt the agenda as published Motion carried unanimously.

APPROVAL OF MINUTES FROM SEPTEMBER 12, 2018

MOTION: Michael Gordon moved, seconded by Debra Conrad, to approve the minutes of September 12, 2018 as published. Motion carried unanimously.

(Michael Gordon left at 2:17 p.m.)

(Michael Gordon reconnected via teleconference at 2:21 p.m.)

REVIEW OF REAL ESTATE CONTRACTUAL FORMS FOR REVISION

WB-11 Residential Offer to Purchase

Review of Proposed Revisions and Memo

MOTION: Kim Moermond moved, seconded by Michael Gordon, to restore actual receipt to the Seller Termination Right under the Financing Commitment Contingency. Motion carried 5-3.

ADJOURNMENT

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

The meeting adjourned at 2:55 p.m.

DRAFT

OFFER TO PURCHASE REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: November 26, 2018

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

The 20181026WB-11WithTrackingWRA11 draft that accompanies this memo shows the result of the discussions of the meetings of the WRA Forms Committee on November 15 and the DSPS Real Estate Contractual Forms Advisory Committee on October 26, 2018, 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, 68-71 -- 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.

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?

➤ **The following is the definition arrived at by DSPS Real Estate Contractual Forms Advisory Committee on October 26. They will likely give it another look at their next meeting:**

■ **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. If the document or written notice is electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

➤ **Does the WRA Forms Committee agree? Yes. It requires the Party to open the email so protects against some other person like a child opening it, if it can be proved; not that much different than the current definition in that it is not 100% perfect and there still may be incidences of abuse but can’t protect against them all in a definition, this is about the email from the agent to the party being opened. Recommend the practice of following up with a telephone call when bump notices are delivered.**

Financing Commitment Contingency overall – Lines 244-274

The tracking was removed from what had been lines 243-291, and now is lines 244-274:

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) at the first adjustment, and by not more than _____% (“1%” if no entry) ~~a second time and annually thereafter at each subsequent adjustment~~. 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 DSPS Forms Committee was satisfied with the above passage with the modifications shown in tracking. Does the WRA Committee agree? Yes, after the minor corrections highlighted in yellow are made.**

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

Financing Contingency – Seller Termination Rights – Lines 275-283

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.

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.

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 ~~Seller's Actual Receipt~~ **Buyer's delivery** of a copy of Buyer's written loan commitment ~~and Buyer's written delivery directions 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~~.

The DSPS Committee reversed course and went back to the Actual Receipt standard after their discussion of the new definition of Actual Receipt and discussion of a situation where the seller was harmed because they did not know the loan commitment had been delivered and they would have been protected had the standard been Actual Receipt. It would seem apparent that one side or the other might possibly be caught

in such a situation depending upon the standard. The ping pong drafting is going to have to come to an end!

■ **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 written loan commitment from Buyer.

➤ **What comments would the WRA Forms Committee wish to make? They agree the version immediately above and as shown in the draft. It doesn't come up that often.**

Appraisal Contingency – Lines 294-312:

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 DSPS Forms Committee did not find this acceptable, didn't like the Buyer initiating a price amendment and spent quite a bit of time working on the following substitute:**

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, **accompanied by a written notice of low appraised value. Unless the Seller has the right to cure (at lines XXX), upon delivery to Seller of such appraisal report and notice of low appraised value, this Offer shall be null and void with any earnest money returned to Buyer.**

■ **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, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase price to the value shown on Buyer's appraisal within three days of Buyer's notice of low appraised value. If Seller does not give timely notice of election to adjust the purchase price to the appraised value {THIS IS WHERE WE LEFT OFF}, this Offer shall be null and void and earnest money returned to Buyer. Buyer and Seller agree to execute an amendment to reflect the adjusted purchase price within five days of Seller's notice.

Another option modeled after the inspection contingency language:

APPRAISAL CONTINGENCY: This Offer is contingent upon 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 indicating an appraised value not equal to or greater than the agreed upon purchase price, and a written notice objecting to the appraised value.

■ **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, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase price to the value shown on the appraisal report within three days of Buyer's delivery of the appraisal report and the notice objecting to the appraised value. Seller agrees to execute any amendment initiated by Buyer solely to reflect the adjusted purchase price within five days of delivery of Seller's notice.

This Offer shall be null and void with any earnest money returned to Buyer if Buyer makes timely delivery of the notice objecting to appraised value and the written appraisal report 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 adjust the purchase price or (b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown on the appraisal report.

- **What response/preference does the WRA Forms Committee have or are there other suggestions and ideas? They prefer the version immediately above because it has a familiar feel to it, and if the parties want a compromise price, they will have to agree on an amendment to change price in another manner and remove/satisfy this contingency. The return of earnest money is pursuant to Wis. Admin. Code § REEB 18.09(1)(f).**

Request for FIRPTA Provision – Lines 321-330

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. **Option #1:**

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: **Option #2:**

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: **Option #3:**

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: **Option #4:**

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:
Option #5:

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

Seller ~~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. **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.**

Another new suggestion for review from Arizona: **Option #6:**

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.

Another new suggestion: **Option #7:**

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 transferee (Buyer) 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. 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.

CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, 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 Buyer 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.

- **Does the WRA Forms Committee like any of these or are there other suggestions and ideas? How about the WRA proposal with the two sentences highlighted in yellow added? The WRA Committee prefers Option #5 above. They are in favor of having the seller disclose foreign person status in the RECR**

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 386-403). **Choice #1**

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. **Choice #2**

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 and curing the defects in a good and workmanlike manner and giving Buyer a written report of the work done three days prior to closing. The following shall also apply CHECK AND COMPLETE AS APPLICABLE :

Seller shall provide 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.

Seller shall engage 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.

Seller shall engage 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.

Seller present to Buyer the possible viable radon mitigation system locations and venting and Buyer may choose 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 timely provide selection.

(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.

Below is a very basic radon testing contingency (**yellow** highlights in the draft, lines 404-419): **Choice #3**

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 WRA Forms Committee is in favor of Choice #3. There should be something in the offer for those not working with a real estate agent and it should stop agents from including radon testing in the inspection contingency.**

The DSPS Committee also wanted to see the RANW Radon Testing Contingency for discussion purposes: **Choice #4**

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 363-385

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.

> **The WRA Forms Committee is not in favor of a general testing contingency being included. Should there be a general testing contingency in the offer? Are there other suggestions and ideas?**

Attorney Approval Contingency – Lines 420-434:

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.

The WRA Forms Committee commented briefly on this – how it is hard to have a provision that will pass legal muster – and may be checking on some other possible language. It was commented that this may help deflect some of the consumer annoyance that real estate licensees cannot give legal advice – here is your opportunity to have legal input at the beginning to head off possible glitches down the line.

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

Closing of Buyer's Property Contingency – Lines 435-440:

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 and proceed with the Offer.

- **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 441-451

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 452-457:

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 465-504:

First of all, the language highlighted in yellow has been referred to the smart title attorneys with the Wisconsin Land Title Association and they will study this and give us a recommendation so stay tuned. At line 478 the idea is to give a prompt with some examples of what one would write in on the blank lines. Ideas for examples are most welcome. At lines 486-487 it makes clear that the buyer pays for the cost of recording the deed. This may need further clarification as to whether this means just the recording fee or whether it includes the transfer fee – meant it to be just the recording fee while the seller would pay the transfer fee. At lines 494-496 the provision provides a choice for when the title commitment will be furnished and offers shifts the opportunity for obtaining the title insurance commitment closer to the beginning of the transaction.

TITLE EVIDENCE

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

violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Offer [this issue has been referred to the Wisconsin Land title Association and all of their smart attorneys and they will get back to us with a recommendation], general taxes levied in the year of closing and _____

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

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

The Wisconsin Land Title Association has looked at this issue and does not recommend any modifications to this language. **They do have other suggestions that will be forthcoming**, and we hope to have a written statement regarding all of this from WLTA so we may capture all relevant explanations and reasoning!

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

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

- **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer's attorney or Buyer no later than _____ days ("15" if left blank) (after acceptance)(prior to closing) [STRIKE ONE] ("after acceptance" if neither is stricken), showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines ~~326-335xxx-xxx~~, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.
- **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title ~~by the time set for closing~~ within five days of delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have a reasonable time, but not exceeding ~~15-_____~~ days ("five" if left blank) from Buyer's delivery of the notice stating title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

Another example of language:

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

- **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer's attorney or Buyer not more than _____ days after acceptance ("15" if left blank), showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 293-299, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.
- **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title within _____ days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have a reasonable time, but not exceeding _____ days ("5" if left blank) from Buyer's delivery of the notice stating title objections, to deliver notice to Buyer

stating Seller's election to remove the objections by the time set for closing. In the event that Seller is unable to remove said objections, Buyer may deliver to Seller written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, Buyer shall deliver written notice of termination and this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

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

Special Assessments/Other Expenses: Lines 505-514:

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 522-531:

A proposed suggestion – starting at line 522:

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 516 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 531 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 541-555:

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 546-547: 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 556-579:

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—(3) 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 595-596:

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-11RevisionDSPS12-5-18

WB-11 RESIDENTIAL OFFER TO PURCHASE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 Address for Seller: _____

56 Address for Buyer: _____

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

58 E-Mail address for Seller: _____

59 E-Mail address for Buyer: _____

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

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

67 **DEFINITIONS**

68 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or
69 written notice physically in the Party's possession, regardless of the method of delivery. *Should this standard be retained versus
70 just delivery, i.e., when a document is emailed?? If the document or written notice is electronically delivered, Actual Receipt
71 shall occur when the Party opens the electronic transmission.*

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

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

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

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

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

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

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

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

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

92 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
93 in a well that serves the Property, including unsafe well water.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155 _____.

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

160 Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on
 161 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
 162 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall re-
 163 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
 164 the responsibility of the Parties to complete, not the responsibility of the real estate firms in this transaction.

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

168 _____

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

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

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

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

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

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

194 **DEFINITIONS CONTINUED FROM PAGE 2**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

245 **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written
246 _____ [loan type or specific lender, if any] first mortgage loan commitment as described below, within
247 _____ days of acceptance of this Offer. The financing selected shall be in an amount of not less than \$ _____
248 for a term of not less than _____ years, amortized over not less than _____ years. Initial monthly payments of principal and
249 interest shall not exceed \$ _____. Buyer acknowledges that lender's required monthly payments may also include
250 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums.
251 The mortgage ~~shall~~ may not include a prepayment premium. Buyer agrees to pay discount points in an amount not to exceed
252 _____% ("0%" if no entry) of the loan. If Buyer is using multiple loan sources or obtaining a construction loan or land contract
253 financing, describe at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx. Buyer agrees to pay all customary loan
254 and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of
255 application promptly upon request of Seller. Seller agrees to allow lender's appraiser access to the Property.

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

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

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

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

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

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

275 ■ **SELLER TERMINATION RIGHTS:** ~~If Buyer does not deliver a loan commitment on or before the Deadline on~~
276 ~~line xxx, Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's~~
277 ~~Actual Receipt of written loan commitment from Buyer. If Buyer does not make timely delivery of said a loan commitment on~~
278 ~~or before the Deadline on line xxx.; Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer~~
279 ~~prior to Buyer's Seller's Actual Receipt/delivery of a copy of Buyer's written loan commitment to Seller, and Buyer's written~~
280 ~~delivery directions. In the event Seller delivers to Buyer a written notice of termination, Buyer will have the right to cure the~~
281 ~~breach by delivering the written loan commitment and delivery directions to seller within _____ hours ("24" if left blank) of Seller's~~
282 ~~delivery of the notice of termination. Seller has no ability to reject a loan commitment unless Seller has added standards to~~
283 ~~this contingency that are not met.~~

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

287 **SELLER FINANCING:** ~~Seller shall have 10 days from the earlier of (i) Buyer delivery of written notice of evidence of~~
288 ~~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
289 to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms set forth
290 in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice
291 is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to cooperate with and
292 authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller
293 financing.

294 **APPRAISAL CONTINGENCY:** This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised
295 at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent
296 to the date stated on line 1 indicating an appraised value for the Property equal to or greater than the agreed upon purchase
297 price. This contingency shall be deemed satisfied unless Buyer, within _____ days (**"45" if left blank**) of acceptance, delivers
298 to Seller a copy of the appraisal report which indicates that the appraised value is not equal to or greater than the agreed upon

299 purchase price, accompanied by a written notice of low appraised value. Unless the Seller has the right to cure (at lines XXX),
300 upon delivery to Seller of such appraisal report and notice of low appraised value, this Offer shall be null and void with
301 any earnest money returned to Buyer, accompanied by a written notice of termination and a Buyer signed amendment which
302 reduces the purchase price to a price not less than the appraised value and includes no other changes, terms or conditions.
303 Seller shall have two days to execute and deliver the amendment to Buyer in satisfaction of this contingency. If Seller does not
304 timely deliver the accepted price amendment, this Offer shall be null and void.

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

307 ■ **RIGHT TO CURE:** Seller (shall) (shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have a right to cure. If Seller
308 has the right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase
309 price to the value shown on Buyer’s appraisal within three days of Buyer’s notice of low appraised value. If Seller does
310 not give timely notice of election to adjust the purchase price to the appraised value **{THIS IS WHERE WE LEFT**
311 **OFF}**, this Offer shall be null and void and earnest money returned to Buyer. Buyer and Seller agree to execute an
312 amendment to reflect the adjusted purchase price within five days of Seller’s notice.

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

321 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** Section 1445 of the Internal Revenue Code (IRC)
322 provides that a transferee (Buyer) of a United States real property interest must deduct and withhold a 15% tax on the total
323 Amount Realized in the transaction if the transferor (Seller) is a Foreign Person and no exception from FIRPTA withholding
324 applies. A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section
325 897(i) of the IRC to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. The Amount
326 Realized is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed
327 by Buyer.

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

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

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

340 If Buyer defaults, Seller may:

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

344 If Seller defaults, Buyer may:

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

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

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

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

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

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

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

371 The Property shall be returned to its condition prior to the test(s) unless otherwise agreed.
372 This testing contingency shall be deemed satisfied unless Buyer, within five days of the earlier of 1) Buyer's receipt of the testing
373 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
374 identifying the Defect(s) to which Buyer objects (Notice of Defects). For purposes of this Testing Contingency, Defects (as
375 defined in the Offer) do not include structural, mechanical or other conditions that nature and extent of which Buyer had actual
376 knowledge or written notice before signing the Offer.

377 **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
378 cure, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of Buyer's delivery of the Notice of Defects
379 to Seller, a written notice stating Seller's election to cure, (2) curing the defects in a Good and Workmanlike Manner and (3)
380 delivering to Buyer a report detailing the work done within three days prior to closing. This Offer shall be null and void if Buyer
381 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)
382 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
383 deliver written notice of Seller's election to cure. This Offer shall be null and void if Buyer delivers notice to Seller within five
384 days of the delivery deadline stating Seller failed to deliver report(s) by the applicable deadline(s) if Seller was responsible to
385 provide the report(s).

386 **Choice #1 RADON TESTING CONTINGENCY:** This Offer is contingent upon (Buyer obtaining)(Seller providing)
387 **STRIKE ONE** ("Seller providing" if neither is stricken) a current written report, within _____ days of acceptance, documenting
388 the results of a radon gas test on the Property, conducted by a professional testing service or contractor qualified to perform
389 radon testing. Testing must be conducted consistent with Environmental Protection Agency (EPA) guidelines.

390 **Right to Cure:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to remediate. If the test results
391 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
392 of radon, along with a copy of the test results. This Offer shall be considered terminated, effective upon delivery of said notice
393 and test results, unless Seller has the right to remediate.

394 If Seller has the right to remediate, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of receipt of
395 the test results, a written notice of Seller's election to remediate, (2) hiring a certified radon mitigation contractor to install an
396 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
397 written approval of the radon mitigation system location and venting, and (4) providing a re-test report to Buyer after installation
398 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
399 be performed by, or under the supervision of, a professional testing service or certified radon measurement contractor. This
400 Offer shall be terminated if Buyer submits the test results and a notice objecting to the radon levels identified in the test results
401 and Seller has the option to remediate, but the Seller either elects not to remediate, or fails to elect to remediate. If Seller was
402 responsible to provide the radon test report, this Offer shall be null and void if Buyer delivers notice to Seller, within five days of
403 the deadline for delivery of the report, stating Seller failed to deliver the report by the stated deadline.

404 **Choice #3 RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer having a qualified third party
405 perform a radon test at the Property in a manner consistent with applicable EPA and Wisconsin Department of Health Services
406 (DHS) protocols and standards and furnish a current written report indicating the radon level is less than 4.0 picoCuries per liter
407 (pCi/L), at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken) expense. This contingency shall be deemed satisfied
408 unless Buyer, no later than _____ days ("20" if left blank) (after acceptance)(prior to closing) **STRIKE ONE** ("prior to
409 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
410 or higher. Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.

411 **CONTINGENCY SATISFACTION/RIGHT TO CURE:** This contingency shall be deemed satisfied unless Buyer within five
412 days of the deadline for delivery of said report delivers to Seller a copy of the written report and written notice stating why the
413 report does not satisfy the contingency standard. If Seller has the right to cure, Seller may satisfy this contingency by (1)
414 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
415 in a good and workmanlike manner and by giving Buyer a report of the work done three days prior to closing. This Offer shall
416 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
417 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

418 deliver the notice of election to cure. If Seller was responsible to provide the report, this Offer shall be null and void if Buyer
419 delivers notice to Seller within three days of the delivery deadline stating Seller failed to deliver the report.

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

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

431 A failure of the non-objecting party to accept the proposed amendment, if any, within five days of the objecting party's delivery
432 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
433 provide a proposed amendment to the terms of the Offer shall be deemed a waiver of this contingency. Both Buyer and Seller
434 agree to pay the cost of their respective attorney's services pertinent to this contingency.

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

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

- 444 Written waiver of Financing Contingency
- 445 Written waiver/Proof of bridge loan financing
- 446 Proof of ability to close
- 447 _____ (other – specify)

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

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

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

461 _____
462 _____ . If "Time is of the Essence" applies to a date or
463 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
464 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

465 **TITLE EVIDENCE**

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

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

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

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

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

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

497 ■ TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections
498 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,
499 Seller shall have a reasonable time, but not exceeding ~~45~~ _____ days ("five" if left blank) from Buyer's delivery of the notice stating
500 title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event
501 that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice
502 waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer
503 shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give
504 merchantable title to Buyer.

505 ■ SPECIAL ASSESSMENTS/OTHER EXPENSES: Special assessments, if any, levied or for work actually commenced prior
506 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.
507 "Levied" means the local municipal governing body has passed and published a final resolution describing the planned
508 improvements and the assessment of benefits.

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

515 **EARNEST MONEY**

516 ■ HELD BY: Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-12 and held in
517 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
518 as designated on line 12), until applied to the purchase price or otherwise disbursed as provided in the Offer.

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

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

532 ■ LEGAL RIGHTS/ACTION: The Ffirm's disbursement of earnest money does not determine the legal rights of the Parties in
533 relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Ffirm holding the earnest
534 money. At least 30 days prior to disbursement per (1) or (4) above, the Ffirm shall send Buyer and Seller notice of the
535 disbursement by certified mail. If Buyer or Seller disagree with the Ffirm's proposed disbursement, a lawsuit may be filed to
536 obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of
537 the sale of residential property with one-to-four dwelling units and certain other earnest money disputes. Buyer and Seller should
538 consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the

539 Firm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable
540 Department of [Safety and Professional Services](#) regulations concerning earnest money. See Wis. Admin. Code Ch. [REEB 18](#).

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

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

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

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

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

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

567 This contingency shall be deemed satisfied unless Buyer, within _____ days ("[20" if left blank](#)) of acceptance, delivers to
568 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)
569 identified in those report(s) to which Buyer objects (Notice of Defects).

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

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

573 **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects. If Seller
574 has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within [seven](#) days of Buyer's
575 delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike
576 manner; and (3) delivering to Buyer a written report detailing the work done [at least](#) three days prior to closing. This Offer shall
577 be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not
578 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
579 does not timely deliver the written notice of election to cure.

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

581 **ADDITIONAL PROVISIONS/CONTINGENCIES** _____

582 _____

583 _____

584 _____

585 _____

586 _____

587 _____

588 _____

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

590 _____

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

593 (x) _____
594 Buyer's Signature ▲ Print Name Here ► Date ▲

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

596 Firm: _____ Signature of Agent for the Firm: _____
597 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER**
598 **SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON**
599 **THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**

600 (x) _____
601 Seller's Signature ▲ Print Name Here ► _____ Date ▲ _____

602 (x) _____
603 Seller's Signature ▲ Print Name Here ► _____ Date ▲ _____

604 This Offer was presented to Seller by [Licensee and Firm] _____
605 _____ on _____ at _____ a.m./p.m.

606 This Offer is rejected _____ This Offer is countered [See attached counter] _____
607 Seller Initials ▲ Date ▲ _____ Seller Initials ▲ Date ▲ _____

**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	