



**Tony Evers, Governor**  
**Dawn B. Crim, Secretary**

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**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL**  
**Room N208, 4822 Madison Yards Way, 2<sup>nd</sup> Floor, Madison, WI 53705**  
**Contact: Tom Ryan (608) 266-2112**  
**February 13, 2019**

*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 of January 23, 2019 (2)**
- C. Administrative Matters**
  - 1. Department Updates
  - 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 **(3-26)**
    - b. Proposed Revisions to Offer to Purchase Forms – Balance of Purchase Price **(27-36)**
- E. Public Comments**

**ADJOURNMENT**

**NEXT SCHEDULED MEETING: APRIL 3, 2019**

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

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 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  
JANUARY 23, 2019**

**PRESENT:** Joseph Busch (*via teleconference*), Debra Conrad, John Drzewiecki (*via teleconference*), Richard Marino (*via teleconference*), Kim Moermond, Laura Peck, Jonathan Sayas (*joined via teleconference at 10:11 a.m.*), Gary Tritz, Thomas Weber, Jr. (*via teleconference excused at 1:43 p.m.*), Pamela Widen

**EXCUSED:** Cori Lamont, Casey Clickner, Michael Gordon, Robert Webster

**STAFF:** Tom Ryan, Executive Director; Kate Stolarzyk, Bureau Assistant; and other DSPS Staff

**CALL TO ORDER**

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

**ADOPTION OF AGENDA**

**MOTION:** Debra Conrad moved, seconded by Pamela Widen, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES FROM DECEMBER 5, 2018**

**MOTION:** Richard Marino moved, seconded by Laura Peck, to approve the minutes of December 5, 2018 as published. Motion carried unanimously.

**RECOMMENDATIONS TO UPDATE THE CURRENT FORM REVISION PROCESS**

**MOTION:** Kim Moermond moved, seconded by Gary Tritz, to request the Real Estate Examining Board consider restructuring the forms revision process to facilitate revisions on multiple forms concurrently. Motion carried unanimously.

*(Jonathan Sayas joined via teleconference at 10:11 a.m.)*

*(Thomas Weber, Jr. was excused at 1:43 p.m.)*

**ADJOURNMENT**

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

The meeting adjourned at 2:28 p.m.

## OFFER TO PURCHASE REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Council  
From: WRA Forms Committee  
Date: February 7, 2019  
RE: **WB-11 Residential Offer to Purchase**

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The 20190123WB-11PostWRA013119 draft that accompanies this memo shows the result of the discussions of the WRA Forms Committee on January 31, 2019 working from the draft that resulted from the January 23, 2019 meeting of the DSPS Real Estate Contractual Forms Advisory Council, 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.

### WB-11 Residential Offer to Purchase

#### Formatting Suggestions

We have received feedback and suggestions from various WRA members. One comment is for there to be a longer line in the form. For instance, some want a longer line for the property description to include tax parcel numbers; some want longer lines for deadlines like in the Financing Commitment Contingency and the Appraisal Contingency so that they can write in a specific date, "by 12/31/19." Another one is at the end of the offer where there are blank lines for the sellers to initial and date if they are rejecting or countering – not enough room if using electronic platforms if there are multiple sellers. These areas of the form have been highlighted in green on the form with the thought that they are primarily formatting issues for a possible discussion later on.

#### Earnest Money Proposed Change, Lines 10-17:

The WRA Forms Committee received a comment that earnest money is frequently, at least in some areas, not held by listing firms. The Committee discussed that there is a long blank line at line 12 where it can be written in if somebody other than the listing firm will hold the earnest money but it was felt that agents are not very vigilant about completing that line and that requires that the buyer's agent have been notified in advance that the listing firm was not holding the money. There was a suggestion for check boxes, but the Committee instead proposed to move the Caution from the Earnest Money section to the front page:

**CAUTION: Should persons other than a Firm hold earnest money, an escrow agreement should be drafted by the Parties or an attorney.**

The idea is that this will be a better reminder, with the placement near the beginning of the offer rather than near the end, to write in if the title company or some other party is holding the earnest money and that an escrow agreement will be needed.

➤ **The DSPS went farther with this suggestion and proposed as follows:**

EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be mailed, or commercially or personally delivered within \_\_\_\_\_ days ("five" if left blank) of acceptance to (listing Firm) (Buyer agent's Firm) (third party identified as \_\_\_\_\_) **STRIKE THOSE NOT APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer agent's Firm; then Seller's account).

**CAUTION: Should persons other than a Firm hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. See lines XXX to XXX for additional provisions regarding disbursements unless a third-party escrow agreement supersedes such provisions.**

- **The WRA Forms Committee agreed with this concept and proposes the following additional modifications which are also shown in the draft:**

EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be mailed, or commercially or personally delivered within \_\_\_\_\_ days ("five" if left blank) of acceptance to (listing Firm) (Buyer's agent's Firm) (third party: ~~identified as~~ \_\_\_\_\_) **STRIKE AND COMPLETE THOSE NOT AS APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer's agent's Firm; if no Firm, then Seller's account).

**CAUTION: Should persons other than a Firm hold earnest money, an escrow agreement should be drafted by the Parties or an attorney. See lines XXX to XXX for ~~additional provisions regarding earnest money disbursements provisions~~ unless a third-party escrow agreement supersedes such provisions.**

- **Does the DSPS Committee agree or are there additional suggestions?**

### **Actual Receipt – Lines 65-66, 73-75 -- General discussion:**

#### **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 has been approved by both committees:**

- **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.

**Dates/Deadlines Falling on Weekends, Etc.**

On lines 141-142 of the WB-11 draft it says: “If the date for closing falls on a weekend, or federal or state holiday, the closing date shall be the next Business Day.” The suggestion was made that this sort of shifting of dates and deadlines be applied to all dates and deadlines including contingencies, as is being done by some addenda: “If any contingency deadline expires on a Saturday, Sunday or holiday recognized by the U.S. government, the deadline shall be extended to and include the next business day.” The rationale is that providers such as lenders and underwriters and other providers are not available on weekends, some teams and agents don’t work weekends and it contributes to an enhanced style of life for all.

The WRA Committee chatted about this and they were satisfied with the provision regarding closings but not enthused about applying it across the board. **The DSPS Committee agrees with leaving this language for closings only.**

**Financing Commitment Contingency overall – Lines 248-277:**

The tracking was removed from what had been lines 243-291, and now is lines 248-277:

**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 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) at each subsequent adjustment. The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus \_\_\_\_\_% ("6" 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.**

Both Committees have approved these provisions.

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

### **Financing Commitment Contingency – Seller Termination Rights – Lines 279-281**

Here we find an instance of the Actual Receipt standard. After much back and forth discussion the following in the provision both committee have agreed to:

■ **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.

### **Appraisal Contingency – Lines 291-306:**

After much discussion back and forth, this version was discussed at the last Forms Council meeting and the modifications adopted are shown below and in the draft in tracking:

**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" if left blank) days of Buyer's delivery of the appraisal report and the notice objecting to the appraised value. Seller and Buyer agrees to promptly execute any amendment initiated by Buyer either Party after delivery of Seller's notice, 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.

- **Some on the WRA Forms Committee thought this provision sends the message that the seller must reduce the purchase price, and some thought the default should be “shall not.” Others thought this was better than the old “drop dead” version and the process is consistent with the Inspection Contingency; licensees can be trained to use an amendment for a different price/result as is done in the Inspection Contingency.**

A couple DSPTS Committee members were amenable to a “shall not” default but most of the group was satisfied to leave the default as “shall” to mirror the inspection contingency process/pattern. The right to cure section now reads as follows after the DSPTS Committee review and a change of the default to five days instead of three days:

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 \_\_\_\_\_ (“five” if left blank) days of Buyer’s delivery of the appraisal report and the notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated by either party after delivery of Seller’s notice, solely to reflect the adjusted purchase price.

- **The WRA Forms Committee found this to be acceptable.**

### **Request for FIRPTA Provision – Lines 315-325**

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.

- **Both Committees have agreed they will work from Option #5 below.**

#### **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.

### **Option #5.**

The WRA Forms Committee suggested the following to provide more protection for the buyer and the DSPS Committee also favored this version – they made additional modifications to the language:

- The WRA wants there to be no choices to be made in the provision so this was further modified and now appears in the draft at lines 315-325:

**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 Seller’s status in conformance with IRC § 1445(b)(2) 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.**

- The DSPS Committee discussed who would provide the affidavit and who is responsible to see that it is done. Many title companies will not and certainly it should not be the licensees – buyer’s attorney perhaps? There was also discussion of whether the WRA should offer a form for this purpose. Would we want this done? There are forms available online from title companies and other sources that are essentially the same. The DSPS Committee intends to discuss this more at their next meeting on January 23. They were interested in knowing what was done in other states. See, for instance, Knight Barry’s Minnesota forms at <https://www.knightbarry.com/Forms/MN-Forms.aspx>
- The WRA Forms Committee also discussed whether the WRA should have a form for the Certificate of Non-Foreign Status. Many are uneasy with the form, in part because it includes a TIN/Social Security number, but if the language above is adopted there may be no other reliable way for the Sellers to complete and submit the form before closing because not all title companies are on board to work with this.
- On January 23 the DSPS Committee elected to pass this until next time based on the conversation from that committee that they thought there were other ways to handle this in other states, etc. Those DSPS Committee members will be responsible to bring forward their other proposals and the WRA Forms Committee is not expected to do anything further. However, please note the significant comments that were made:
  1. The suggestion was made to move this provision above the signature lines so it would not be missed by the parties.
  2. The affidavit of the seller needs to be submitted to the closing agent/title company BEFORE closing so there are no last-minute surprises. If the seller is a foreign person additional paperwork needs to be done.

**3. The latest word from the WLTA attorneys is they would prefer an affirmative statement in the offer as to whether the seller is or is not a foreign person. This would provide a heads-up as to what was coming and what would be required for closing.**

Another 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 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.

## **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.
- ◆ It was pointed out that a floating deadline is difficult to work with. For example, “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, Lines 381-399:**

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 Buyer’s 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 381-399): **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~~ within \_\_\_\_\_ days (**"2015"** if left blank) ~~(after of 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 and written notice objecting to the radon level in the report. ~~Seller (shall)(shall not)~~ ~~STRIKE ONE~~ (~~"shall" if neither is stricken)~~ have the right to cure.

■ ~~CONTINGENCY SATISFACTION/RIGHT TO CURE:~~ ~~Seller (shall)(shall not)~~ ~~STRIKE ONE~~ (~~"shall" if neither is stricken)~~ have the 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-five days??** of receipt delivery of Buyer's notice; and (2) and by curing the defects installing a radon mitigation system in conformance with EPA standards, in a good and workmanlike manner and by giving Buyer a report of the work done and a post remediation test report indicating a radon level of less than 4.0 pCi/L no later than 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? Both Committees have agreed to Option #3 with a few modifications shown in tracking above and in the draft. 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 WRA Forms Committee is generally satisfied, but some Committee members wanted to change the time frames and add that the radon mitigation system be in conformance with EPA standards as shown above in the blue highlights. Does the DSPS Committee agree with these proposals?**

The DSPS Forms Committee made some additional language modifications such that the provision now reads:

**Choice #3 RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer obtaining a current written report of the results of a radon test at the Property performed by a qualified third party in a

manner consistent with applicable EPA and Wisconsin Department of Health Services (DHS) protocols and standards 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, within \_\_\_\_\_ days ("20" if left blank) of acceptance delivers to Seller a written copy of the radon test results report indicating a radon level of 4.0 pCi/L or higher and written notice objecting to the radon level in the report.

■ **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 (1) delivering a written notice of Seller's election to cure within **seven** days of delivery of Buyer's notice; and, (2) installing a radon mitigation system in a good and workmanlike manner and by giving Buyer a report of the work done and a post remediation test report indicating a radon level of less than 4.0 pCi/L no later than 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.

- **The WRA Forms Committee also tweaked the language regarding the timeframes and the status of the radon mitigation system installed by the seller to cure the defect. The WRA Forms Committee wants the time frames to be the same as they will be in the inspection contingency. They assume the default for the contingency deadline will be 20 days and prefer the time for the seller to respond to buyer's notice be 10 days to match the inspection contingency (as it currently is, if it doesn't get changed). They said there is a psychology to this when working with a seller whereby a licensee addresses inspection contingency and radon testing contingency items and issues in tandem and it is very helpful to not have multiple timelines, even though a radon mitigation issue typically can be resolved quickly.**
- **The WRA Forms Committee also pushed back with regard to the proposal that a seller who installs a radon mitigation system – or his or her qualified/certified contractor – must do so in conformance with EPA standards. When asked what is meant by this we were directed to pages 12-13 of the EPA brochure entitled “Consumer’s Guide to Radon Reduction – How to Fix Your Home,” at [https://www.epa.gov/sites/production/files/2016-12/documents/2016\\_consumer\\_guide\\_to\\_radon\\_reduction.pdf](https://www.epa.gov/sites/production/files/2016-12/documents/2016_consumer_guide_to_radon_reduction.pdf)**

There is says:

### **CHECKING YOUR CONTRACTOR'S WORK**

Below is a list of basic installation requirements that your contractor should meet when installing a radon reduction system in your home. It is important to verify with your contractor that the radon mitigation standards (ASTM E2121 in particular) are properly met to ensure that your radon reduction system will be effective. You also can check with your state radon office to see if there are state requirements that your contractor must meet.

- Radon reduction systems must be clearly labeled. This will avoid accidental changes to the system that could disrupt its function.
- The exhaust pipes of soil suction systems must vent above the surface of the roof and 10 feet or more above the ground, and must be at least 10 feet away from windows, doors or other openings that could allow radon to reenter the home, if the exhaust pipes do not vent at least 2 feet above these openings.
- The exhaust fan must not be located in or below a livable area. For instance, it should be installed in unconditioned space.
- If installing an exhaust fan outside, the contractor must install a fan that meets local building codes for exterior use.

- Electrical connections of all active radon reduction systems must be installed according to local electrical codes.
- A warning device must be installed to alert you if an active system stops working properly. Examples of system failure warning devices are: a liquid gauge, a sound alarm, a light indicator, and a dial, or needle display, gauge. The warning device must be placed where it can be seen or heard easily. Your contractor should check that the warning device works. Later on, if your monitor shows that the system is not working properly, call a contractor to have it checked.
- A post-mitigation radon test should be done within 30 days of system installation, but no sooner than 24 hours after your system is in operation with the fan on, if it has one. The contractor may perform a post-mitigation test to check his work and the initial effectiveness of the system; however, it is recommended that you also get an independent follow-up radon measurement. Having an independent tester perform the test, or conducting the measurement yourself, will eliminate any potential conflict of interest. To test the system's effectiveness, a two- to seven-day measurement is recommended. Test conditions: windows and doors must be closed 12 hours before and during the test, except for normal entry and exit.
- Make sure your contractor completely explains your radon reduction system, demonstrates how it operates and explains how to maintain it. Ask for written operating and maintenance instructions and copies of any warranties.

Other radon mitigation information is found at <https://www.dhs.wisconsin.gov/radon/reduce-radon.htm> and <https://www.wbdg.org/ffc/epa/criteria/epa-402-r-93-078> although this is very technical and apparently intended to serve as a model for state radon mitigation standards.

**Choice #3 RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer obtaining a current written report of the results of a radon test at the Property performed by a qualified third party in a manner consistent with applicable EPA and Wisconsin Department of Health Services (DHS) protocols and standards 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, within \_\_\_\_\_ days ("**20**" if left blank) of acceptance delivers to Seller a written copy of the radon test results report indicating a radon level of 4.0 pCi/L or higher and written notice objecting to the radon level in the report.

■ **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 (1) delivering a written notice of Seller's election to cure within **seven-10** days of delivery of Buyer's notice; and, (2) **installing a radon mitigation system in conformance with EPA standards in a good and workmanlike manner** and by giving Buyer a report of the work done and a post remediation test report indicating a radon level of less than 4.0 pCi/L no later than 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.

- ❖ **Also note this discussion is possibly not over as one of the DSPS Committee members is going to submit an alternative proposal at their next meeting, likely something from the RANW Addendum A.**

➤ **Is this satisfactory to the DSPS Forms Committee or are there other suggestions?**

### **General Testing Contingency, lines 358-380:**

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. The DSPS Forms Committee also is not in favor of a general testing contingency and we can take it out of the draft next time!**

### **Attorney Approval Contingency – Lines 400-414:**

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. In the *Devine v. Notter* the court allowed a provision with unlimited right to cancel because it has a short time frame – 5 days to decide. 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.

**The WRA Forms Committee discussed this at length January 3. Some are in favor on including an attorney approval provision and others are not. It is commonly used near the Illinois border, it gives consumers the ability to include an attorney review which should head off consumer frustration when licensees cannot provide legal advice, demonstrates that legal assistance is offered/not discouraged, some attorneys are helpful and correct errors, clarify personal property, zero in on specifics in addenda that may be overlooked or unfamiliar, and make helpful suggestions. Others are concerned saying there are no good real estate attorneys in their market (in today's electronic world it may not be necessary to use local attorneys), that attorneys will find problems to appear to have earned their fee and some attorneys don't know real estate well and create obstacles or kill deals (committee members could not point to specific instances of this however), sends the message that licensees are not competent to prepare offers on their own (another discussion), etc. Lots of pros and cons and lots of passion!**

There are attorney approval optional contingencies in some company addenda.

The DSFS Forms Committee discussed whether an Attorney Approval Contingency was desirable and not unlike the WRA Forms Committee there were opinions on both sides. They were not concerned that an attorney would blow up the deal and it was thought the attorneys and brokers might grow into a comfort level with the contingency. Those with a provision in their addendum said it was not used often and attorneys cost money many are reluctant to spend. In the end they voted, and they came out against inclusion in the WB-11. They were in favor of it being included in the WRA Addendum A (as an opinion, they have no authority to require it).

**Attorney Approval Contingency is Rejected and will be deleted!**

### **Closing of Buyer's Property Contingency – Lines 415-424:**

This was separated from the bump clause. It is shown with a default for the time frame which is not likely to draw favor, but we put in defaults everywhere possible for discussion purposes. It also looks to set a consequence if there is no closing by the deadline. The provision suggests an implementation method: the buyer delivers a copy of the deed selling the buyer's property to satisfy the contingency – should that be included, or should the buyer show compliance in some other way such as with a notice?

What is the consequence if the sale of the buyer's property does not close 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/ if Buyer's property does not close on or before the closing date specified in this Offer/if the purchase contract for Buyer's property becomes null and void for any reason, then Buyer shall notify Seller and

[\[Seller may deliver a notice of termination and this Offer shall be null and void??\]](#) [\[Buyer may unilaterally waive this contingency and proceed with the Offer.??\]](#) [\[Another consequence??\]](#)

Another alternative for illustration/discussion:

This Offer is contingent upon the closing of the sale of Buyer's property located at \_\_\_\_\_ no later than \_\_\_\_\_. Buyer's property is, or shall be within seven days of acceptance of this Offer, listed with \_\_\_\_\_, at a list price no greater than \$\_\_\_\_\_.

If the Buyer's property is not listed within seven days of acceptance of this Offer Seller may deliver written notice of termination. If the sale of Buyer's property does not close on or before the closing date of this Offer or if an offer for Buyer's becomes null and void for any reason, Buyer shall promptly notify Seller in writing, and either Party shall have the right to declare this Offer null and void by written notice delivered to the other Party as per the terms of this Offer.

If Seller accepts a bona fide secondary offer, Seller may deliver written notice to Buyer of acceptance. This Offer shall be null and void and Buyer shall be deemed conclusively to have forfeited and released any interest in the Property unless Buyer, prior to such notice or within \_\_\_\_\_ hours ("72" if left blank) of Buyer's Actual Receipt of such notice, delivers to Seller one of the following:

- (1) Written notice from Buyer that Buyer is waiving the Closing of Buyer's Property Contingency and all financing contingencies in this Offer, making this a cash offer AND written verification from a financial institution or third party in control of Buyer's funds that Buyer has sufficient funds necessary to close this transaction which are not contingent on the sale of Buyer's property, or;
- (2) A copy of the offer to purchase on Buyers' property which has all contingencies, other than any financing contingencies, properly removed or satisfied AND written verification from a financial institution buyer under said offer to purchase has been pre-approved for financing which may be based on the following minimum criteria: satisfactory credit history, accepted offer terms and buyer debt ratios.

If the Buyer satisfies this requirement using (2) above, this contingency shall be deemed modified and shall be subject only to the successful closing of the sale of Buyer's property on or before the closing date in this Offer.

**NOTE: Buyer may not unilaterally waive this contingency without complying with requirements (1) or (2) above.**

Another proposal that seems a bit circular but is here to trigger discussion -- should these provisions be neutral and how do you get there, or should it favor one party or the other?

**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 or waived by the deadline, 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.**

The DSPS Committee discussed this in rough terms and this hopefully reflects the concepts they discussed and now appears in the WB-11 draft:

**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 \_\_\_\_\_ [\(the deadline\)](#). Buyer may proceed to closing without satisfaction of this contingency, and may waive this contingency unilaterally, in writing, at any time [upon written notice delivered to Seller.](#) [If Buyer sells Buyer's property Buyer shall deliver written notice to Seller indicating the contingency is](#)

satisfied. But if this contingency is not otherwise timely satisfied or waived by the deadline, Seller may deliver a notice of termination to Buyer, 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.

The WRA Forms Committee reviewed the above rough draft of the Closing of Buyer's Property Contingency and proposed the following modification to add a requirement for proof of funds if a buyer is going to be allowed to unilaterally waive. Otherwise the contingency has little meaning in the opinion of the WRA Forms Committee.

**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 \_\_\_\_\_ (the deadline). Buyer may proceed to closing without satisfaction of this contingency, and may waive this contingency unilaterally, in writing, at any time upon written notice delivered to Seller accompanied by reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close. If Buyer sells Buyer's property Buyer shall deliver written notice to Seller indicating the contingency is satisfied. But if this contingency is not otherwise timely satisfied or waived by the deadline, Seller may deliver a notice of termination to Buyer, 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.

The DSPS Committee, per the request of one of their Committee members, is also going to look at the RANW Addendum A provision for discussion purposes:

**CLOSING OF THE SALE 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's property is, or shall be, within seven (7) days of acceptance of this Offer, listed for sale with \_\_\_\_\_ at a list price no greater than \_\_\_\_\_. If the closing of the sale of Buyer's property does not occur on or before the closing date for this Offer or if an offer for Buyer's property becomes null and void or terminated for any reason, Buyer shall promptly notify seller in writing, and either Party shall have the right to declare this Offer null and void by written notice thereof delivered to the other Party.

(NOTE: Choose box at line 15 or 28 if box at line 6 is marked).

**ACCEPTED OFFER TO PURCHASE ON BUYER'S PROPERTY AND NO BUMP**

(NOTE: Choose box at line 17 or 18 if box at line 15 is marked)

Seller acknowledges that Buyer has provided Seller a copy of the accepted offer to purchase on Buyer's property.

Buyer shall deliver to Seller, within three (3) days of acceptance of this Offer a copy of the accepted offer to purchase on Buyer's property

(NOTE: Choose one of the two options on line 21 or 23 if box at line 18 is marked)

with written proof that all contingencies are satisfied or removed, and which has a closing date prior to the closing

in this Offer.

which is subject to financing and \_\_\_\_\_, and which has a closing

date prior to the closing in this Offer.

If Buyer does not make timely delivery of the accepted offer on Buyer's property that is consistent with the representation(s) above, Seller may terminate this Offer by delivering a written notice of termination to Buyer prior to (Buyer's delivery) (Seller's Actual Receipt) **STRIKE ONE** ("Buyer's delivery" if neither is stricken) of a copy of the accepted offer on Buyer's property.

**CONTINUED MARKETING – WITH BUMP CLAUSE**

If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer of such acceptance. This Offer shall be null and void and Buyer shall be deemed conclusively to have forfeited and released any interest

in the Property unless Buyer, prior to such notice or within \_\_\_\_\_ hours of Buyer's Actual Receipt of such notice, delivers to Seller one of the following:

(1) written notice from Buyer that Buyer is waiving the Closing of the Sale of Buyer's Property Contingency and all financing contingencies in this Offer, making this a cash offer AND written verification from a financial institution or a third party in control of Buyer's funds that Buyer has sufficient funds necessary to close this transaction which are not contingent on the sale of Buyer's property; or

(2) a copy of the offer to purchase on Buyer's property which has all contingencies, other than any financing contingencies, properly removed or satisfied AND written verification from a financial institution that buyer under said offer to purchase has been pre-approved for financing, which then will modify this Closing of the Sale of Buyer's Property contingency making this Offer subject to the successful closing of the sale of Buyer's property described on lines 7-8 above, on or before the closing date in the Offer.

**NOTE: A financing pre-approval is NOT considered a loan commitment.**

If Buyer accepts a bona fide offer for the purchase of Buyer's property prior to receiving written notice from Seller that Seller has accepted a bona fide secondary offer, Buyer shall promptly notify Seller of such acceptance. Such notification does NOT modify **lines 6-53 of this Addendum** (the Closing of the Sale of Buyer's Property Contingency).

Unless Seller has given Buyer notice of a bona fide secondary offer, once Buyer has an accepted offer on Buyer's property that complies with requirement (2) above, the Buyer shall promptly deliver to Seller a copy of such offer and this Closing of the Sale of Buyer's Property Contingency shall be deemed modified and subject to the closing of the sale of Buyer's property. Other than the deadlines for Buyer Financing Pre-approval letter, if applicable, payment of Earnest Money and \_\_\_\_\_,

all deadlines in this Offer which run from acceptance shall run from the time Buyer has complied with requirement (1) above or from the time Buyer has an accepted offer for the purchase of Buyer's property that complies with requirement (2) above.

**NOTE: Buyer may not unilaterally waive this contingency without compliance with (1) or (2) above.**

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

### **Bump Clause – Lines 425-435:**

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. Also, is it good or bad to have a list of check box items for the buyer to comply with to satisfy the bump? Are the prompts better within the text as in the current version? Which prompts should be included?

**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 Commitment 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 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. \_\_\_\_\_

**[INSERT OTHER REQUIREMENTS, IF ANY (e.g., PAYMENT OF ADDITIONAL EARNEST MONEY, WAIVER OF CLOSING OF BUYER'S PROPERTY CONTINGENCY, WAIVER OF FINANCING**

**COMMITMENT CONTINGENCY, ALL CONTINGENCIES, PROVIDING EVIDENCE OF SALE OR BRIDGE LOAN, etc.])** Seller may unilaterally waive this Bump Clause provision.

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 ...

The DSFS Forms Committee looked at these and worked on the following rough draft of what they preferred that now is shown in the WB-11 draft:

**BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer 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** :

Financing Commitment Contingency

Proof of bridge loan financing

Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

Other: \_\_\_\_\_ [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 of said notice, this Offer shall be null and void.

> **The WRA Forms Committee reviewed the above rough draft of the bump Clause and proposed the following corrections and modifications. Should this provision be made so that it can be used with other contingencies in addition to the Closing of Buyer's Property Contingency?**

**BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer 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** :

**Waiver of the** Financing Commitment Contingency

Proof of bridge loan financing

Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

Other: \_\_\_\_\_ [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 of said notice, this Offer shall be null and void.

> **Is this acceptable or are there other suggestions and ideas?**

**Secondary Offer – Lines 436-442:**

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 seven" 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? The DSPS Forms Committee was fine with the existing language shown first above with the five-day default added. Does the WRA Forms Committee find this acceptable?**
- **No, the WRA Forms Committee prefers a seven-day default.**

### **Title Evidence section – Lines 450-486:**

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. The provision makes it 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. The provision also 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),~~osing,~~ 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.

The DSPS Forms Committee reviewed and discussed these provisions and made the following changes:

- DELIVERY~~PROVISION~~ OF MERCHANTABLE TITLE: ~~For purposes of closing, title evidence shall be acceptable if~~ the required title insurance commitment ~~shall be~~ 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);~~ not less than 5 business days before closing, not less than 5 business days before closing, 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 within five days of delivery of the title commitment to Buyer or Buyer’s attorney~~by the time set for closing~~. 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.

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

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.

**Special Assessments/Other Expenses: Lines 487-496:**

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 497-522:**

A proposed suggestion:

If this Offer does not close due to a contingency that has not been satisfied, the earnest money shall be returned to the Party whose contingency has not been satisfied within 10 days of notice of termination if the other Party does not object. If for any other reason this offer does not close, the earnest money shall be returned according to the written disbursement agreement ....

How to tell who the contingency is for? What if no notice of termination? Inspection?

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 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. 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 523-537:**

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 538-561:**

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: ~~(4)~~ delivering written notice to Buyer within 7 days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects by either having the Defects cured in a good and workmanlike manner; ~~at Seller's expense no later than 3 days prior to closing or and (32)~~ delivering to Buyer a written report detailing the work done at least 3 days prior to closing, giving

Buyer a credit at closing so Buyer, or a contractor or vendor of Buyer's choice, can cure the Defects in a good and workmanlike manner. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

### **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 577-578:**

Does this configuration make more sense? Other modifications?

### **License Numbers for RESPA**

Should there be an area where the licensees in the transaction provide their license numbers needed for the RESPA Closing Disclosure?

### **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-11RevisionDSPS2-13-19

**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 **longer line requested for Tax Parcel Numbers, etc.** \_\_\_\_\_ 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 (listing Firm) (Buyer's agent's Firm) (third party: ~~identified as~~ \_\_\_\_\_) **STRIKE**  
13 **THOSE NOT AND COMPLETE AS APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer's agent's Firm; if  
14 no Firm, then Seller's account).

15 **CAUTION: Should persons other than a Firm hold earnest money, an escrow agreement should be drafted by the**  
16 **Parties or an attorney. See lines XXX to XXX for additional earnest money disbursement provisions regarding**  
17 **disbursements unless a third party third-party escrow agreement supersedes such provisions.**

18 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise provided below.  
19 **NOTE: Because of the extraordinary threat of wire-and money transfer fraud. Buyers or Sellers anticipating using**  
20 **money transfers should personally contact the title company or other settlement service provider by phone or in**  
21 **person to confirm timing and other requirements for transfer of funds. These communications should be directly**  
22 **between Buyers and/or Sellers and the title company or settlement service provider, and do not involve the Firms or**  
23 **real estate agents.**

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

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

32 ■ NOT INCLUDED IN PURCHASE PRICE: \_\_\_\_\_  
33 \_\_\_\_\_  
34 \_\_\_\_\_

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

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

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

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

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

45 **INCLUSION OF OPTIONAL PROVISIONS** Terms of this Offer that are preceded by an OPEN BOX (  ) are part of this  
46 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.

47 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and  
48 written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines xx-xx.  
49 (1) **Personal:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line  
50 xx or xx.

51 Name of Seller's recipient for delivery, if any: \_\_\_\_\_

52 Name of Buyer's recipient for delivery, if any: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

67 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this  
68 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  
69 Buyer's occupancy, Property shall be in broom swept condition and free of all debris, refuse, and personal property except for  
70 personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be given  
71 subject to tenant's rights, if any.

72 **DEFINITIONS**

73 ■ **ACTUAL RECEIPT**: "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or  
74 written notice physically in the Party's possession, regardless of the method of delivery. If the document or written notice is  
75 electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

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

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

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

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

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

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

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

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

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

96 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  
97 in a well that serves the Property, including unsafe well water.

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

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

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

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

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

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

115 m. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain, wetland  
116 or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin Department of Natural

117 Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures related to shoreland  
118 conditions, enforceable by the county.

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

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

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

126 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  
127 transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of which  
128 the Property owner is a member.

129 r. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint  
130 driveway) affecting the Property.

131 s. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance  
132 claims relating to damage to the Property within the last five years.

133 t. A pier attached to the Property not in compliance with state or local pier regulations.

134 u. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other  
135 insect infestations.

136 v. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or  
137 more burial sites on the Property.

138 w. Other Defects affecting the Property.

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

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

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

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

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

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

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

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

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

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

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

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

164  Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on  
165 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  
166 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall re-  
167 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  
168 the responsibility of the Parties to complete, not the responsibility of the real estate firms in this transaction.

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

172 \_\_\_\_\_

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

174 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property which includes one-to-four dwelling units to  
175 provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been  
176 inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal

177 representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The law provides:  
178 "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the contract of sale  
179 . . . , to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does not receive a  
180 report within the 10 days may, within two business days after the end of that 10-day period, rescind the contract of sale . . . by  
181 delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if a  
182 Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is submitted to  
183 Seller. Buyer should review the report form or consult with an attorney for additional information regarding rescission rights.

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

188 \_\_\_\_\_  
189 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT**

190 **ADDITIONAL PROVISIONS/CONTINGENCIES**  
191 \_\_\_\_\_  
192 \_\_\_\_\_  
193 \_\_\_\_\_  
194 \_\_\_\_\_  
195 \_\_\_\_\_  
196 \_\_\_\_\_  
197 \_\_\_\_\_

198 **DEFINITIONS CONTINUED FROM PAGE 2**

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

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

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

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

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

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

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

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

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

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

235 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged in an amount  
236 not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer in writing,

237 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  
238 shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than closing. If the amount  
239 of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Offer  
240 may be canceled at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to  
241 the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the  
242 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,  
243 any insurance proceeds shall be held in trust for the sole purpose of restoring the Property.

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

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

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

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

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

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

265  **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed \_\_\_\_\_%. The initial interest rate shall be  
266 fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_% ("2" if no entry) at  
267 the first adjustment and by not more than \_\_\_\_\_% ("1" if no entry) at each subsequent adjustment. The maximum  
268 interest rate during the mortgage term shall not exceed the initial interest rate plus \_\_\_\_\_% ("6" if no entry). Monthly  
269 payments of principal and interest may be adjusted to reflect interest changes.

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

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

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

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

284  **SELLER FINANCING:** Seller shall have 10 days from the earlier of (i) Buyer delivery of written notice of evidence of  
285 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  
286 to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms set forth  
287 in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice  
288 is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to cooperate with and  
289 authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller  
290 financing.

291  **APPRAISAL CONTINGENCY:** This Offer is contingent upon Buyer or Buyer's lender having the Property appraised at  
292 Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent  
293 to the date stated on line 1, indicating an appraised value for the Property equal to or greater than the agreed upon purchase  
294 price.

295 This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers to Seller a copy of the  
296 appraisal report indicating an appraised value not equal to or greater than the agreed upon purchase price, and a written notice  
297 objecting to the appraised value.

298 ■ RIGHT TO CURE: Seller (shall) (shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure. If Seller has the  
299 right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase price to the value  
300 shown on the appraisal report within \_\_\_\_\_ ("~~five~~three" if left blank) days of Buyer's delivery of the appraisal report and the  
301 notice objecting to the appraised value. Seller and Buyer agrees to promptly execute any amendment initiated by Buyer either  
302 party after delivery of Seller's notice, solely to reflect the adjusted purchase price, within five days of delivery of Seller's notice.  
303 This Offer shall be null and void with any earnest money returned to Buyer if Buyer makes timely delivery of the notice objecting  
304 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  
305 but: (a) Seller delivers written notice that Seller will not adjust the purchase price or (b) Seller does not timely deliver the written  
306 notice adjusting the purchase price to the value shown on the appraisal report.

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

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

322 **Seller shall provide a sworn affidavit under penalties of perjury prior to closing confirming Seller's status in conformance with**  
323 **IRC § 1445(b)(2). If Seller is a Foreign Person and Buyer fails to withhold, Buyer may be held liable for the tax. Firms or real**  
324 **estate agents are not responsible for determining whether FIRPTA applies. The Parties may wish to consult independent legal**  
325 **counsel or tax advisors.**

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

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

335 If Buyer defaults, Seller may:

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

339 If Seller defaults, Buyer may:

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

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

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

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

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

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

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

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

372 **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  
373 cure, Seller may satisfy this contingency by: (1) delivering to Buyer, within 10 days of Buyer's delivery of the Notice of Defects  
374 to Seller, a written notice stating Seller's election to cure, (2) curing the defects in a Good and Workmanlike Manner and (3)  
375 delivering to Buyer a report detailing the work done within three days prior to closing. This Offer shall be null and void if Buyer  
376 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)  
377 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  
378 deliver written notice of Seller's election to cure. This Offer shall be null and void if Buyer delivers notice to Seller within five  
379 days of the delivery deadline stating Seller failed to deliver report(s) by the applicable deadline(s) if Seller was responsible to  
380 provide the report(s).

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

389 **CONTINGENCY SATISFACTION/RIGHT TO CURE:** Seller (shall)(shall not)  ~~STRIKE ONE~~ ("shall" if neither is stricken) have  
390 the right to cure. ~~This contingency shall be deemed satisfied unless Buyer within five days of the deadline for delivery of said~~  
391 ~~report delivers to Seller a copy of the written report and written notice stating why the report does not satisfy the contingency~~  
392 ~~standard.~~ If Seller has the right to cure, Seller may satisfy this contingency by (1) delivering a written notice of Seller's election  
393 to cure within seven\*\* days of ~~delivery receipt~~ of Buyer's notice; ~~and,~~ (2) ~~and by installing a radon mitigation system curing the~~  
394 ~~defects~~ in a good and workmanlike manner and by giving Buyer a report of the work done ~~and a post remediation test report~~  
395 ~~indicating a radon level of less than 4.0 pCi/L no later than~~ three days prior to closing. This Offer shall be null and void if Buyer  
396 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  
397 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  
398 to cure. If Seller was responsible to provide the report, this Offer shall be null and void if Buyer delivers notice to Seller within  
399 three days of the delivery deadline stating Seller failed to deliver the report.

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

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

411 A failure of the non-objecting party to accept the proposed amendment, if any, within five days of the objecting party's delivery  
412 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  
413 provide a proposed amendment to the terms of the Offer shall be deemed a waiver of this contingency. Both Buyer and Seller  
414 agree to pay the cost of their respective attorney's services pertinent to this contingency.

415  **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's  
416 property located at \_\_\_\_\_, no later than \_\_\_\_\_ (the deadline).  
417 Buyer may proceed to closing without satisfaction of this contingency, and may waive this contingency unilaterally, in  
418 writing, at any time upon written notice delivered to Seller ~~upon written notice delivered to Seller accompanied by~~  
419 ~~reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the~~

420 time of verification, sufficient funds to close. If Buyer sells Buyer's property Buyer shall deliver written notice to Seller  
421 indicating the contingency is satisfied. But if this contingency is not otherwise timely satisfied or waived by the deadline,  
422 Seller may deliver a notice of termination to Buyer, rendering this Offer null and void, except that Buyer may elect to  
423 proceed with this Offer if Buyer delivers to Seller a written notice waiving this contingency within \_\_\_\_\_ hours after delivery  
424 of Seller's notice.

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

428  Waiver of the Financing Commitment Contingency

429  Proof of bridge loan financing

430  Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide Seller  
431 with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

432  Other: \_\_\_\_\_ [insert other  
433 requirements, if any (e.g., payment of additional earnest money, waiver of all contingencies, providing evidence of sale,  
434 etc.)]

435 within \_\_\_\_\_ hours ("72" if left blank) of Buyer's Actual Receipt of said notice, this Offer shall be null and void.

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

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

446 \_\_\_\_\_  
447 \_\_\_\_\_ . If "Time is of the Essence" applies to a date or  
448 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  
449 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

450 **TITLE EVIDENCE**

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

457 \_\_\_\_\_  
458 (insert other allowable exceptions from title, if any) which constitutes merchantable title for purposes of this transaction. Seller  
459 shall complete and execute the documents necessary to record the conveyance at Seller's cost and pay the Wisconsin Real  
460 Estate Transfer Fee.

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

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

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

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

479 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections  
480 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,  
481 Seller shall have a reasonable time, but not exceeding 45 days ("five" if left blank) from Buyer's delivery of the notice stating  
482 title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event  
483 that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice  
484 waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer  
485 shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give  
486 merchantable title to Buyer.

487 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior  
488 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.  
489 "Levied" means the local municipal governing body has passed and published a final resolution describing the planned  
490 improvements and the assessment of benefits.

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

#### 497 **EARNEST MONEY**

498 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-12 and held in  
499 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  
500 as designated on line 12), until applied to the purchase price or otherwise disbursed as provided in the Offer.

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

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

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

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

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

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

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

547 **CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well**  
548 **as any follow-up inspection(s).**  
549 This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days ("20" "15?" if left blank) of acceptance, delivers  
550 to 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  
551 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

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

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

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

563 **ADDITIONAL PROVISIONS/CONTINGENCIES** \_\_\_\_\_

564 \_\_\_\_\_  
565 \_\_\_\_\_  
566 \_\_\_\_\_  
567 \_\_\_\_\_  
568 \_\_\_\_\_  
569 \_\_\_\_\_  
570 \_\_\_\_\_

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

572 \_\_\_\_\_

573 (x) \_\_\_\_\_

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

575 (x) \_\_\_\_\_

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

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

578 Firm: \_\_\_\_\_ Signature of Agent for the Firm: \_\_\_\_\_

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

582 (x) \_\_\_\_\_

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

584 (x) \_\_\_\_\_

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

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

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

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

589 Seller Initials ▲ Date ▲ \_\_\_\_\_ Seller Initials ▲ Date ▲ \_\_\_\_\_