



REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
Room N208, 4822 Madison Yards Way, 2nd Floor, Madison, WI 53705
Contact: Christian Albouras (608) 266-2112
July 30, 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 June 26, 2019 (2)**
- C. Administrative Matters**
 - 1. Department, Staff and Council Updates
 - 2. Real Estate Examining Board Update
- D. Introductions, Announcements, and Recognition**
 - 1. New Member – Angela Rowland
- E. Review of Real Estate Contractual Forms for Revision – Discussion and Consideration**
 - 1. **WB-11– Residential Offer to Purchase (3-53)**
 - a. Review of Proposed Revisions and Memo
 - b. Proposed Revisions to Offer to Purchase Forms
- F. Public Comments**

ADJOURNMENT

NEXT MEETING: AUGUST 12, 2019

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

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COUNCIL
MEETING MINUTES
JUNE 26, 2019**

PRESENT: Joseph Busch (*arrived at 9:44 a.m.*), Casey Clickner, Debra Conrad, John Drzewiecki (*arrived at 9:40 a.m.*), Michael Gordon, Cori Lamont, Richard Marino (*excused at 1:34 p.m.*), Kim Moermond, Laura Peck, Jonathan Sayas, Gary Tritz (*excused at 1:34 p.m.*), Thomas Weber, Jr., Pamela Widen (*arrived at 9:40 a.m.*)

EXCUSED: Angela Rowland, Robert Webster

STAFF: Christian Albouras, Executive Director; Kimberly Wood, Program Assistant Supervisor-Adv.; and other DSPS Staff

CALL TO ORDER

Richard Marino, Chairperson, called the meeting to order at 9:37 a.m. A quorum of ten (10) members was confirmed.

ADOPTION OF AGENDA

MOTION: Debra Conrad moved, seconded by Casey Clickner, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES FROM APRIL 3, 2019

MOTION: Laura Peck moved, seconded by Thomas Weber, Jr., to approve the minutes of April 3, 2019 as published. Motion carried unanimously.

RECOMMENDATIONS TO UPDATE THE CURRENT FORM REVISION PROCESS

(Pamela Widen and John Drzewiecki arrived at 9:40 a.m. and Joseph Busch arrived at 9:44 a.m.)

REVIEW OF REAL ESTATE CONTRACTUAL FORMS FOR REVISION

(Richard Marino was excused at 1:34 p.m. and Gray Tritz was excused at 1:34 p.m.)

ADJOURNMENT

MOTION: John Drzewiecki moved, seconded by Cori Lamont, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 3:02 p.m.

Wood, Kimberly - DSPS

From: Debbi Conrad
Sent: Monday, July 22, 2019 5:15 PM
To: Albouras, Christian - DSPS; Wood, Kimberly - DSPS
Cc: Cori Lamont; Tracy Rucka
Subject: Real Estate Contractual Forms Advisory Council Meeting July 30
Attachments: SellerCertifNonForeignStatusRev0719.docx; 7.11.19_WB-11_Transaction Layout_DRAFT.docx; OfferWB-11RevisionDSPS7-30-19.docx; 20190626WB-11-PostMtgWRA071119.docx

Christian and Kim,

Attached please find the following for the next meeting of the Real Estate Contractual Forms Advisory Committee scheduled for July 30:

1. A Seller Certification of Non-Foreign Status to be used when implementing the FIRPTA provision
2. A reordered version of the WB-11 intended to be a sample of what the form might be like if the provisions appeared in the sequence matching the flow of the transaction.
3. A copy of the WB-11 in its existing order which we are using to keep track of the modified language in the various provisions
4. A memo discussing the changes to the WB-11 provisions

Please let me know if you have any questions.

Debbi

SELLER CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a United States real property interest must withhold tax if the transferor (Seller) is a foreign person.

To inform _____
_____ (Buyer) that withholding of tax is not required upon
the disposition of a United States real property interest by _____

_____, the undersigned hereby certifies the following on behalf of the Seller:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate, as those terms are defined in the Internal Revenue Code and Income Tax Regulations.
2. Seller's United States Taxpayer Identification Number (Social Security Number or Employer Identification Number) is _____.
3. Seller's address is _____.
4. Seller understands Buyer may disclose this certification to the Internal Revenue Service and any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Dated this _____ day of _____, 20_____.

Print name: _____ (Seller signature)

Print name: _____ (Seller signature)

Print name: _____ (Seller signature)

Print name: _____ (Seller signature)

Seller Entity Name (if any): _____
Print Name Here ▲

(x) _____
Authorized Signature▲ Print Name & Title Here► _____

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

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

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

13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____

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

23 ■ **NOT INCLUDED IN PURCHASE PRICE:** _____

24 _____
25 _____
26 _____
27 _____

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

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

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

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

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

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

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

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

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

60 **EARNEST MONEY**

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

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

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

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

75 ■ HELD BY: Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-13 and
76 held in the trust account of the party identified on lines 12-13, until applied to the purchase price or otherwise disbursed as
77 provided in the Offer.

78 **CAUTION: Should persons other than a firm hold earnest money, lines xxx-xxx below do not apply. An escrow**
79 **agreement should be drafted by the Parties or an attorney. If someone other than Buyer pays earnest money,**
80 **consider a special disbursement agreement.**

81 ■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer and the
82 earnest money is held by a firm, the earnest money shall be promptly disbursed (after clearance from payer's depository
83 institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money
84 shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed
85 according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not
86 been delivered to the Firm holding the earnest money within 30 days after the date set for closing, that Firm may disburse
87 the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or
88 Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court
89 order; (4) upon authorization granted within this Offer; or (5) as otherwise provided by law. The Firm may retain legal
90 services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the earnest
91 money any costs and reasonable attorneys' fees, not to exceed \$ _____ ("500" if no entry), prior to disbursement.

92 ■ **LEGAL RIGHTS/ACTION:** The Firm's disbursement of earnest money does not determine the legal rights of the Parties
93 in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the
94 earnest money. At least 30 days prior to disbursement per (1), (4) or (5) above, where the Firm has knowledge that either
95 Party disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disburse by
96 certified mail. If Buyer or Seller disagree with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court
97 order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale
98 of residential property with one-to-four dwelling units. Buyer and Seller should consider consulting attorneys regarding
99 their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for
100 good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and
101 Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

102 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property which includes one-to-four dwelling
103 units to provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has
104 never been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for
105 example, personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. §
106 709.03. The law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after
107 acceptance of the contract of sale . . . , to the prospective Buyer of the property a completed copy of the report . . . A
108 prospective Buyer who does not receive a report within the 10 days may, within two business days after the end of that
109 10-day period, rescind the contract of sale . . . by delivering a written notice of rescission to the owner or the owner's
110 agent." Buyer may also have certain rescission rights if a Real Estate Condition Report disclosing defects is furnished
111 before expiration of the 10 days, but after the Offer is submitted to Seller. Buyer should review the report form or consult
112 with an attorney for additional information regarding rescission rights.

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

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

118

119 INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT

120 ■ CONDITIONS AFFECTING THE PROPERTY OR TRANSACTION: "Conditions Affecting the Property or Transaction"
121 are defined to include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171 q. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will
172 be transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of
173 which the Property owner is a member.

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

s. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance claims relating to damage to the Property within the last five years.
t. A pier attached to the Property not in compliance with state or local pier regulations.
u. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other insect infestations.
v. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or more burial sites on the Property.
w. Other Defects affecting the Property.

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

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

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

☐ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines xxx-xxx). This Offer is contingent upon a Wisconsin registered home inspector performing a home inspection of the Property after the date on line 1 of this Offer 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.

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

This contingency shall be deemed satisfied unless Buyer, within _____ days ("15" if left blank) of acceptance, delivers 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 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

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

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

■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within _____ ("10" if left blank) days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing. "Good and Workmanlike Manner" means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements. 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.

☐ **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 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.

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.

■ **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.

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

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

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

☐ **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

297 dated subsequent to the date stated on line 1, indicating an appraised value for the Property equal to or greater than the
298 agreed upon purchase price.

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

302 ■ **RIGHT TO CURE:** Seller (shall) (shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure. If Seller has
303 the right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase price to
304 the value shown on the appraisal report within _____ days ("five" if left blank) of Buyer's delivery of the appraisal report
305 and the notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated by
306 either party after delivery of Seller's notice, solely to reflect the adjusted purchase price. This Offer shall be null and void
307 with any earnest money returned to Buyer if Buyer makes timely delivery of the notice objecting to appraised value and
308 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
309 delivers written notice that Seller will not adjust the purchase price or (b) Seller does not timely deliver the written notice
310 adjusting the purchase price to the value shown on the appraisal report.

311 ☐ **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of
312 Buyer's property located at _____ no later than _____ (the deadline). If closing does not occur by the deadline,
313 this Offer shall become null and void unless Buyer delivers to Seller, within _____ days of the deadline ("5" if left blank),
314 but no later than the date set for closing of this Offer, reasonable written verification from a financial institution or third
315 party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close or has proof of bridge
316 loan financing. Delivery of verification or proof of bridge loan shall not extend the closing date for this Offer. If Buyer fails
317 to deliver verification or proof of bridge loan, this Offer shall be null and void and earnest money returned to Buyer.

318 ☐ **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another
319 offer has been accepted. If Buyer does not deliver to Seller the documentation listed below within _____ hours ("72" if left
320 blank) of Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

321 (1) Written waiver of the Closing of Buyer's Property Contingency if line XXX is marked;

322 (2) Written waiver of _____

323 _____ (name other contingencies subject to the Bump Clause, if any); and

324 (3) Any checked below:

325 ☐ Proof of bridge loan financing

326 ☐ Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide

327 ☐ Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

328 Other: _____

329 _____

330 [insert other requirements, if any (e.g., payment of additional earnest money, etc.)]

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

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

341 _____

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

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

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

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

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

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

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

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

362 **TITLE EVIDENCE**

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

369 _____
370 _____
371 (insert other allowable exceptions from title, if any) which constitutes merchantable title for purposes of this transaction.
372 Seller shall complete and execute the documents necessary to record the conveyance at Seller's cost and pay the
373 Wisconsin Real Estate Transfer Fee.

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

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

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

387 ■ **DELIVERY OF MERCHANTABLE TITLE:** The required title insurance commitment shall be delivered to Buyer's
388 attorney or Buyer not less than 5 business days before closing, showing title to the Property as of a date no more than 15
389 days before delivery of such title evidence to be merchantable per lines xxx-xxx, subject only to liens which will be paid
390 out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

391 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of
392 objections to title within five days of delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller
393 shall have a reasonable time, but not exceeding ____ days ("five" if left blank) from Buyer's delivery of the notice stating
394 title objections, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the
395 event that Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver
396 written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the
397 objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's
398 obligations to give merchantable title to Buyer.

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

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

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

412 _____
413 If "Time is of the Essence" applies to a date or Deadline, failure to perform by the exact date or Deadline is a breach of
414 contract. If "Time is of the Essence" does not apply to a date or Deadline, then performance within a reasonable time of
415 the date or Deadline is allowed before a breach occurs.

416 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's
417 rights under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of
418 the (written) (oral) **STRIKE ONE** lease(s), if any, are _____
419 _____
420 _____. Insert additional terms, if any, at lines xxx-xxx or xxx-xxx or attach as an addendum per line xxx.

421 **DEFINITIONS**

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

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

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

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

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

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

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

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

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

447 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of
448 the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the
449 transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession
450 data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing
451 concession information and data, and related information regarding seller contributions, incentives or assistance, and third
452 party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) distribute
453 copies of this Offer in order for Seller to obtain an accepted offer on any property Seller intends to purchase, **or for either**
454 **party to meet or satisfy obligations as required under the terms of another offer to purchase.**

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

458 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged in an
459 amount not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify
460 Buyer in writing, and will be obligated to restore the Property to materially the same condition it was in at the date on Line
461 1 of this Offer. Seller shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no
462 later than closing. If the amount of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer
463 in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this Offer
464 despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property,
465 plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this
466 sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole
467 purpose of restoring the Property.

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

472 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in
473 this Offer at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx, or lines xxx-xxx if the Property is leased. At
474 time of Buyer's occupancy, Property shall be in broom swept condition and free of all debris, refuse, and personal property

except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

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

If Buyer defaults, Seller may:

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

If Seller defaults, Buyer may:

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

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

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

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

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

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

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 pay or withhold as a tax up to 15% of the total "Amount Realized" in the sale 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, 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.

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 U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.

Seller hereby represents that Seller is not a Foreign Person. Buyer and Seller agree to comply with FIRPTA requirements under IRC § 1445. No later than 15 days prior to the closing, Seller shall execute and deliver to Buyer, or a qualified substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's non-foreign status in accordance with IRC § 1445 including Seller's Social Security number or taxpayer identification number. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed. If Seller fails to deliver certification of Seller's non-foreign status, Buyer shall be entitled to either: (1) withhold the amount required to be withheld pursuant to IRC § 1445 from amounts otherwise payable to Seller under this Offer; or, (2) terminate this Offer by written notice to Seller prior to closing. Buyer and Seller shall complete, execute, and deliver, on or before closing, any other instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms. Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding FIRPTA.

ADDITIONAL PROVISIONS/CONTINGENCIES _____

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

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

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

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

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

543 Seller: (_____) _____ Buyer: (_____) _____

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

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

549 Address for Seller: _____

550 Address for Buyer: _____

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

552 E-Mail address for Seller: _____

553 E-Mail address for Buyer: _____

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

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

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

558 _____

559 (x) _____

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

561 (x) _____

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

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

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

565

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

570

571 (x) _____

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

573 (x) _____

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

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

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

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

578 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

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:** _____ Dollars (\$ _____).
9 _____
10 ■ **EARNEST MONEY** of \$ _____ accompanies this Offer and earnest money of \$ _____
11 will be mailed, or commercially **electronically** or personally delivered within _____ days ("five" if left blank) ~~of~~ **after** acceptance
12 to (listing Firm) (Buyer's agent's Firm) (third party identified **as** _____)
13 **STRIKE THOSE NOT APPLICABLE** (listing Firm if none chosen; if no listing Firm, then Buyer's agent's **Firm; if no Firm then**
14 **Seller**).
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 earnest money disbursement provisions unless a third-party escrow**
17 **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

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

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

INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT

ADDITIONAL PROVISIONS/CONTINGENCIES

DEFINITIONS CONTINUED FROM PAGE 2

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

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

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

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

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

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

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

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

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

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

PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING If, prior to closing, the Property is damaged in an amount not more than 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~~ after 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
253 payments of principal and interest shall not exceed \$ _____. Buyer acknowledges that lender's required monthly
254 payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private
255 mortgage insurance premiums. The mortgage shall not include a prepayment premium. Buyer agrees to pay discount points in
256 an amount not to exceed _____% ("0" if no entry) of the loan. If Buyer is using multiple loan sources or obtaining a construction
257 loan or land contract financing, describe at lines xxx-xxx or xxx-xxx or in an addendum attached per line xxx. Buyer agrees to
258 pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to
259 provide evidence of 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 COMMITMENT UNAVAILABILITY:** If a financing commitment is not available on the terms stated in this Offer
282 (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver
283 written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability.

284 ☐ **SELLER FINANCING:** Seller shall have 10 days from after the earlier of (i) Buyer delivery of written notice of evidence
285 of unavailability as noted in lines xxx to xxx or (ii) the deadline for delivery of the loan commitment set on lines xxx to xxx, to
286 deliver to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms
287 set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's
288 notice is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to cooperate with
289 and 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~~ after acceptance, delivers to Seller a copy
296 of the appraisal report indicating an appraised value not equal to or greater than the agreed upon purchase price, and a written
297 notice 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 _____ days ("five" if left blank) ~~of~~ after Buyer's delivery of the appraisal report and the
301 notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated by either party after
302 delivery of Seller's notice, solely to reflect the adjusted purchase price. This Offer shall be null and void with any earnest money
303 returned to Buyer if Buyer makes timely delivery of the notice objecting to appraised value and the written appraisal report and:
304 (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
305 adjust the purchase price or (b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown
306 on the appraisal report.

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

315 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the
316 Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as
317 defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing
318 service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession information and data, and
319 related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching
320 comparable sales, market conditions and listings, upon inquiry; and (iv) distribute copies of this Offer in order for Seller to obtain
321 an accepted offer on any property Seller intends to purchase, or for either party to meet or satisfy obligations as required under
322 the terms of another offer to purchase. ~~Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the~~
323 ~~Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as~~
324 ~~defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing~~
325 ~~service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information and data,~~
326 ~~and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching~~
327 ~~comparable sales, market conditions and listings, upon inquiry.~~

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

331 If Buyer defaults, Seller may:

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

335 If Seller defaults, Buyer may:

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

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

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

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

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

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

354 **RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer obtaining a current written report of the results
355 of a radon test at the Property performed by a qualified third party in a manner consistent with applicable EPA and Wisconsin
356 Department of Health Services (DHS) protocols and standards indicating the radon level is less than 4.0 picoCuries per liter
357 (pCi/L), at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken) expense. This contingency shall be deemed satisfied

358 unless Buyer, within _____ days ("20" if left blank) ~~of~~ after acceptance delivers to Seller a written copy of the radon test
359 results report indicating a radon level of 4.0 pCi/L or higher and written notice objecting to the radon level in the report.
360 ■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have the right to cure. If Seller has the
361 right to cure, Seller may satisfy this contingency by (1) delivering a written notice of Seller's election to cure within 10 days of
362 after delivery of Buyer's notice; and, (2) installing a radon mitigation system in conformance with EPA standards in a good and
363 workmanlike manner and by giving Buyer a report of the work done and a post remediation test report indicating a radon level
364 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
365 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
366 delivers written notice that Seller will not cure or b) Seller does not timely deliver the notice of election to cure. If Seller was
367 responsible to provide the report, this Offer shall be null and void if Buyer delivers notice to Seller within three days of the
368 delivery deadline stating Seller failed to deliver the report.

369 ☐ **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's
370 property located at _____ no later than _____ (the deadline). If closing does not occur by the deadline, this Offer shall
371 become null and void unless Buyer delivers to Seller, within _____ days of after the deadline ("5" if left blank), but no later than
372 the date set for closing of this Offer, reasonable written verification from a financial institution or third party in control of Buyer's
373 funds that Buyer has, at the time of verification, sufficient funds to close or has proof of bridge loan financing. Delivery of
374 verification or proof of bridge loan shall not extend the closing date for this Offer. If Buyer fails to deliver verification or proof of
375 bridge loan, this Offer shall be null and void and earnest money returned to Buyer. ~~This Offer is contingent upon the closing of~~
376 ~~the sale of Buyer's property located at _____, no later than _____ (the~~
377 ~~deadline).~~

378 ~~This contingency shall be deemed satisfied unless Buyer or Seller delivers to the other Party notice that the closing of the sale~~
379 ~~of Buyer's property has not occurred by the deadline and this Offer shall be null and void. If Seller delivers the notice the Offer~~
380 ~~will not be null and void if unless Buyer delivers to Seller, within _____ days of Seller's delivery of notice, reasonable written~~
381 ~~verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient~~
382 ~~funds to close or has a bridge loan.~~

383 ☐ **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another offer
384 has been accepted. If Buyer does not deliver to Seller the documentation listed below within _____ hours ("72" if left blank) after
385 Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

386 (1) ~~Written waiver of the Closing of Buyer's Property Contingency if line XXX is marked; and~~
387 (2) ~~Written waiver of _____~~

388 ~~(name other contingencies, if any); and~~

389 ~~(23) Any documentation of the following checked below:~~

390 ☐ ~~Proof of bridge loan financing~~

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

393 ☐ ~~Other: _____~~

394 _____ [insert other requirements, if any
395 (e.g., payment of additional earnest money, ~~waiver of all contingencies, providing evidence of sale, change closing date,~~
396 ~~etc.]]~~

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

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

407 _____
408 _____. If "Time is of the Essence" applies to a date or
409 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
410 a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

411 **TITLE EVIDENCE**

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

418 _____

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

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

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

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

434 ■ **DELIVERY OF MERCHANTABLE TITLE:** The required title insurance commitment shall be delivered to Buyer's attorney or
435 Buyer not less than 5 business days before closing, showing title to the Property as of a date no more than 15 days before
436 delivery of such title evidence to be merchantable per lines ~~xxx-xxx~~, subject only to liens which will be paid out of the proceeds
437 of closing and standard title insurance requirements and exceptions, as appropriate.

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

444 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior
445 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.
446 "Levied" means the local municipal governing body has adopted and published a final resolution describing the planned
447 improvements and the assessment of benefits.

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

454 **EARNEST MONEY**

455 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-132 and held in
456 the trust account of the designated party identified on lines 12-13, listing Ffirm ~~(Buyer's agent if Property is not listed, Seller's~~
457 ~~account if no Ffirm is involved or a third party as designated on line 12)~~, until applied to the purchase price or otherwise disbursed
458 as provided in the Offer.

459 **CAUTION: Should persons other than a firm hold earnest money, lines xxx-xxx below do not apply. A an escrow**
460 **agreement should be drafted by the Parties or an attorney. If someone other than Buyer ~~makes payment of pays~~ earnest**
461 **money, consider a special disbursement agreement.**

462 ■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer and the earnest
463 money is held by a firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if
464 earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed
465 according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written
466 disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to the Ffirm
467 holding the earnest money within ~~60-30~~ days after the date set for closing, that Ffirm may disburse the earnest money: (1) as
468 directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a
469 lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; ~~or~~ (4) upon authorization granted
470 within this Offer; or (5) any other disbursement as otherwise required or allowed provided any other disbursement required or
471 allowed by law. The Ffirm may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and
472 the Ffirm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$ ("(\$500" if no entry),
473 ~~\$750~~, prior to disbursement.

474 ■ **LEGAL RIGHTS/ACTION:** The Ffirm's disbursement of earnest money does not determine the legal rights of the Parties in
475 relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Ffirm holding the earnest
476 money. At least 30 days prior to disbursement per (1), ~~or~~ (4) or (5) above, where the Firm has knowledge that either Party
477 disagrees with the disbursement, the Ffirm shall send Buyer and Seller written notice of the intent to disbursement ~~ment~~ by certified
478 mail. If Buyer or Seller disagree with the Ffirm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding

479 disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property
480 with one-to-four dwelling units ~~and certain other earnest money disputes~~. Buyer and Seller should consider consulting attorneys
481 regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability
482 for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional
483 Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

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

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

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

499 ☐ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines ~~395-409xxx-xxx~~).
500 This Offer is contingent upon an ~~independent~~ Wisconsin registered home inspector performing a home inspection of the Property
501 after the date on line 1 of this Offer which discloses no Defects. This Offer is further contingent upon a qualified independent
502 inspector or independent qualified third party performing an inspection of _____
503 _____ (list any Property component(s)

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

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

510 This contingency shall be deemed satisfied unless Buyer, within _____ days (~~"20" "15?" if left blank~~) ~~of after acceptance,~~
511 delivers 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
512 the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

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

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

516 ■ **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have a right to cure the Defects. If Seller
517 has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within ~~seven (five??)~~ ("10"
518 if left blank) days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a
519 good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done at least no later than three
520 days prior to closing. "Good and Workmanlike Manner" means work performed by independent, properly licensed or credentialed
521 contractors in accordance with any applicable permit requirements. This Offer shall be null and void if Buyer makes timely
522 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
523 right to cure but: (a) Seller delivers written notice that Seller will not cure or (b) Seller does not timely deliver the written notice
524 of election to cure.

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

526 **ADDITIONAL PROVISIONS/CONTINGENCIES** _____
527 _____
528 _____
529 _____
530 _____
531 _____
532 _____
533 _____

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

535 _____

536 (x) _____

537 Buyer's Signature ▲ Print Name Here ►

Date ▲

538 (x) _____
539 Buyer's Signature ▲ Print Name Here ► _____ Date ▲ _____

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

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

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

545 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)** Section 1445 of the Internal Revenue Code (IRC)
546 provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the
547 total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA
548 withholding applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign
549 trust, or foreign estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property
550 transferred, and the amount of any liability assumed by Buyer.

551 **CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer**
552 **may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed**
553 **upon the Property.**

554 Seller hereby represents that Seller is not a Foreign Person. Buyer and Seller agree to comply with FIRPTA requirements
555 under IRC § 1445. No later than 15 days prior to the closing, Seller shall execute and deliver to Buyer, or a qualified
556 substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's
557 non-foreign status in accordance with IRC § 1445 including Seller's Social Security number or taxpayer identification
558 number. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed.
559 If Seller fails to deliver certification of Seller's non-foreign status, Buyer shall be entitled to either: (1) withhold the amount
560 required to be withheld pursuant to IRC § 1445 from amounts otherwise payable to Seller under this Offer; or, (2) terminate
561 this Offer by written notice to Seller prior to closing. Buyer and Seller shall complete, execute, and deliver, on or before
562 closing, any other instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms.

563 Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption
564 applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding
565 FIRPTA.

566 (x) _____
567 Seller's Signature ▲ Print Name Here ► _____ Date ▲ _____

568 (x) _____
569 Seller's Signature ▲ Print Name Here ► _____ Date ▲ _____

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

572 This Offer is rejected [redacted] This Offer is countered [See attached counter] [redacted]
573 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

OFFER TO PURCHASE REVISIONS

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: July 22, 2019

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

The 20190626WB-11-PostMtgWRA071119 draft that accompanies this memo shows the result of the discussion of the discussion of the DSPS Real Estate Contractual Forms Advisory Committee at its meeting on June 26, 2019 and WRA Forms Committee on July 11, 2019. This draft has accepted many of the changes made a few meetings ago and thus has a bit less tracking. This memo removes prior discussions where the issues are settled and both committees agreed.

Also note that this memo is accompanied by a draft of the WB-11 where the sequence of provisions has been reordered to potentially mirror the flow of a transaction. The draft labeled 7.11.19_WB-11_Transaction Layout_DRAFT is a sample of what a different ordering of the provisions might look like. This draft may not be 100% up to date regarding the revisions being made but is offered as an illustration of a possible new order only.

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:

NEW suggestion:

EARNEST MONEY of \$ _____ accompanies this Offer and earnest money of \$ _____ will be mailed, or commercially, **electronically** 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's agent's Firm; if no Firm then Seller).

This is being proposed because some firms are making arrangements for electronic payment of earnest money and the WRA Board of Directors is looking into a possible system for the electronic payment of earnest money as a member benefit.

- **The WRA Forms Committee is in favor of this change – does the DSPS Forms Committee agree?**

NEW: Dates and Deadlines: “Within XX Days of Acceptance”

It was recently pointed out that expressing a deadline as “within ___ days of acceptance,” may be problematic and may trigger a debate whether that means within xx days before or after acceptance or both. This was true when the condominium documents were provided before acceptance when the deadline was expressed as “within 10 days of acceptance.”

This language appears in several spots within the offer. The question is whether they should be clarified to specify whether that is “within ___ days after acceptance” or “within ___ days before acceptance.”

Look at the following lines:

Lines 11, 251, 284, 295, 300, 307-308, 358, 361-362, 371, 384-385 and 509-510 in the draft. Also 516-517. Are these better/clearer if they say “within ___ days **after** acceptance, “etc.?”

In the condo example above it would make a possible difference, but the other instances are from different scenarios with different contexts. Should we make this clarification?

- **The WRA Forms Committee is in favor of this change – does the DSPS Forms Committee agree?**

NEW: Homeowner Associations

There is Homeowner Association legislation in the works. Should something along these lines – or a contingency -- be added to the WB-11?

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

■ **HOMEOWNER ASSOCIATION DISCLOSURES:** Seller agrees to provide Buyer with any homeowner association disclosure materials, covenants and restrictions, or other documents that limit or restrict ownership or use of the Property, within 10 days after acceptance of this Offer.

Note – whether the Property is part of or subject to a subdivision homeowner association is in the list of Conditions Affecting the Property or Transaction and in the RECR and VLDR. A similar proposal was declined in February 2018 but the fact there will be HOA legislation may change the perspective.

- **The WRA Forms Committee is not in favor of this change – does the DSPS Forms Committee agree?**

Financing Commitment Contingency overall – Lines 248-283:

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

NEW: References to Financing Commitment rather than Financing

■ Line 281:

FINANCING COMMITMENT UNAVAILABILITY: If a financing commitment is not available

Lines 307 & 314:

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

- Should these references be changed to say, “financing commitment” rather than just “financing?” The WRA Forms Committee said yes – does the DSPS Forms Committee agree?

FIRPTA Provision – Lines 545-565:

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.

The WRA Forms Committee believes that the process should protect the parties first and the brokers second. It was suggested that the foreign/nonforeign status of sellers should be gathered in the listing contracts.

- ★ Note that the certification forms include the seller’s TIN/Social Security number and the FIRPTA information seems to indicate the certification would go to the buyer to prove to the buyer they don’t have to withhold – it is the buyer’s insurance policy – and there is indication the buyer should hold the certification for 5 years.

April 3, 2019: The DSPS Forms Committee discussed this at some length and the following is what they agreed to (lines 524-543 of the draft). This version assumes the seller is not a foreign person and the seller will have to counter if they are. The seller nonetheless is required to provide a sworn certification of seller’s non-foreign status because that is the only way under the tax code the buyer has “the insurance policy” protecting them from any liability to the IRS. It was discovered that this could be delivered to a “qualified substitute” who is responsible for the closing. This may include a title company or an attorney but does not include the either party’s agent. It seems the seller appoints the qualified substitute (this may need further confirmation). That would mean the certificate with the Social Security number in it does not have to be delivered to the buyer necessarily, at least not at first. The qualified substitute gives the buyer a statement, under penalties of perjury, that the certificate is in the possession of the qualified substitute. The qualified substitute is to hold the certificate for six years unless the IRS requires the buyer to produce it to prove the exemption from withholding. This provides some relief to those real estate licensees

concerned about transmission and holding of documents with Social Security numbers in them. Again, to protect buyers in transaction that is the only way to eliminate liability assuming the buyer does not have knowledge that the certificate or the qualified substitute's statement is false. This also assumes the WRA will create a form for the certificate of non-foreign status.

If the seller does not deliver a certificate at least 15 days before closing the buyer can either withhold from the proceeds pursuant IRC procedures or give notice terminating the offer. If a seller does not provide a Social Security number or an ITIN, the seller is not in violation of the IRC and the buyer becomes obligated to withhold. There are other exemptions from withholding but it was thought best to leave that for the sellers and their attorneys to submit proper notice and proof and get the buyer to agree to such an alternate resolution, likely in a counter-offer or offer amendment.

26 CFR § 1.1445-2 - Situations in which withholding is not required under section 1445(a).

(d)Exceptions to requirement of withholding -

(1)Purchase of residence for \$300,000 or less. No withholding is required under section 1445(a) if one or more individual transferees acquire a U.S. real property interest for use as a residence and the amount realized on the transaction is \$300,000 or less. For purposes of this section, a U.S. real property interest is acquired for use as a residence if on the date of the transfer the transferee (or transferees) has definite plans to reside at the property for at least 50 percent of the number of days that the property is used by any person during each of the first two 12-month periods following the date of the transfer. The number of days that the property will be vacant is not taken into account in determining the number of days such property is used by any person. A transferee shall be considered to reside at a property on any day on which a member of the transferee's family, as defined in section 267(c)(4), resides at the property. No form or other document need be filed with the Internal Revenue Service to establish a transferee's entitlement to rely upon the exception provided by this paragraph (d)(1). A transferee who fails to withhold in reliance upon this exception, but who does not in fact reside at the property for the minimum number of days set forth above, shall be liable for the failure to withhold (if the transferor was a foreign person and did not pay the full U.S. tax due on any gain recognized upon the transfer). However, if the transferee establishes that the failure to reside the minimum number of days was caused by a change in circumstances that could not reasonably have been anticipated at the time of the transfer, then the transferee shall not be liable for the failure to withhold. The exception provided by paragraph (d)(1) does not apply in any case where the transferee is other than an individual even if the property is acquired for or on behalf of an individual who will use the property as a residence. However, this exception applies regardless of the organizational structure of the transferor (i.e., regardless of whether the transferor is an individual, partnership, trust, corporation, etc.).

Other FIRPTA resources: <https://www.narfoc.us.com/billdatabase/clientfiles/172/24/2614.pdf> and <https://www.narfoc.us.com/billdatabase/clientfiles/172/9/2615.pdf>

Both Forms Committees were satisfied with the following:

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 pay or withhold as a tax up to 15% of the total "Amount Realized" in the sale 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, 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.

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 U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.

Seller hereby represents that Seller is not a Foreign Person. Buyer and Seller agree to comply with FIRPTA requirements under IRC § 1445. No later than 15 days prior to the closing, Seller shall execute and deliver to Buyer, or a qualified substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's non-foreign status in accordance with IRC § 1445 including Seller's Social Security number or taxpayer identification number. Any representations made by Seller with respect to this issue shall survive the closing and delivery of the deed. If Seller fails to deliver certification of Seller's non-foreign status, Buyer shall be entitled to either: (1) withhold the amount required to be withheld pursuant to IRC § 1445 from amounts otherwise payable to Seller under this Offer; or, (2) terminate this Offer by written notice to Seller prior to closing. Buyer and Seller shall complete, execute, and deliver, on or before closing, any other instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms.

Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors.

➤ **On June 6 the WRA Forms Committee raised the following questions: Should there be a time frame/deadline for**

If Seller fails to deliver certification of Seller's non-foreign status, Buyer shall be entitled to either: (1) withhold the amount required to be withheld pursuant to IRC § 1445 from amounts otherwise payable to Seller under this Offer; or, (2) terminate this Offer by written notice to Seller at least ____ days ("5" if no entry) prior to closing.

DSPS Forms Committee said no.

➤ **Should there be an additional reference/emphasis to the parties conferring with legal or tax advisors about possible exemptions from the withholding requirement?**

Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding the application of FIRPTA, and exemptions from the withholding requirement.

DSPS Forms Committee modified the language as shown above.

*******See separate form for Seller Certification of Non-Foreign Status: what are your comments?**

Closing of Buyer's Property Contingency – Lines 369-382:

In the current offer this provision is as follows:

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 _____. 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 waiver of the Closing of Buyer's Property Contingency and _____

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

In the offer draft and in this memo, this provision was split to make the bump clause a separate provision. The draft of the Closing of Buyer's Property Contingency also looks to set a consequence if there is no closing by the deadline. The provision suggests an implementation process.

What is the consequence if the sale of the buyer's property does not close by the deadline, assuming the deadline is not the same as the closing date? Does it mean the seller can terminate the offer? Does it simply mean 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 the buyer may unilaterally waive the contingency as this has been a point of discussion for some.

The DSPS Committee proposed the following:

☐ **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. If Buyer does not close on the sale of buyer's property 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 notice?/proof? from Buyer that the sale of buyer's property has closed.

- The DSPS Committee objected to this proposal because it imposes a condition on the buyer's waiver that likely is not there if they waive in response to a bump notice. Not right to make it harder to waive than it is to respond to a bump notice.
- The WRA Forms Committee believes the Seller has no protection and the contingency is meaningless if the buyer can just waive it away and accordingly wants the language to remain. The Seller is relying upon the sale of the Buyer's property in order for the offer to

come together. The WRA Forms Committee believes the blank does get filled in and if it does not it is an issue for training emphasis.

- The DSPS committee is adamant the language in yellow above is not acceptable and must be deleted (lined out above). They also do not believe the buyer should have to provide notice if the buyer closes on the sale of the buyer's property – that is lined out above. They are not finished with their analysis. They also indicated the last sentence should be more like the seller termination provision, so a rough suggestion of such language was added above in tracking.

Another suggestion to structure the contingency like the appraisal or inspection contingencies. It may be largely ignored in many situations, and the Buyer will effectively waive it if the parties just go to closing. If one party or the other wants to end the offer, the party can give notice to make it null and void, and the Buyer, in effect, has the “right to cure” if the seller is giving notice by submitting evidence of the financial means to purchase if the buyer wants to still go forward.

- The WRA Forms Committee found this acceptable where the provision self-satisfies, Buyer can get out and if the Seller wished to end the deal the Buyer can keep it afloat with proof of funds to close. This version is now in the draft. Is this acceptable or are there other suggestions and ideas?

☐ **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). This contingency shall be deemed satisfied unless Buyer or Seller delivers to the other Party notice that the closing of the sale of Buyer's property has not occurred by the deadline and this Offer shall be null and void. If Seller delivers the notice the Offer will not be null and void if ~~unless~~ Buyer delivers to Seller, within _____ days of Seller's delivery of notice, 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; or ~~has a bridge loan; or~~ _____ (something else?).

The DSPS Forms Committee rewrote this provision as follows and this new version is now in the 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). If closing does not occur by the deadline, this Offer shall become null and void unless Buyer delivers to Seller, within _____ days after the deadline ("5" if left blank), but no later than the date set for closing of this Offer, 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 or has proof of bridge loan financing. Delivery of verification or proof of bridge loan shall not extend the closing date for this Offer. If Buyer fails to deliver verification or proof of bridge loan, this Offer shall be null and void and earnest money returned to Buyer.

- Is this acceptable or are there other suggestions and ideas? The WRA Forms Committee proposed the following to remove the confusion in having a second deadline in play and make it clear the contingency was removed:

☐ **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). If closing does not occur by the deadline, this Offer shall become null and void unless Buyer delivers to Seller, within _____ days after on or before the

deadline, ("5" if left blank), ~~but no later than the date set for closing of this Offer,~~ 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 or ~~has~~ proof of bridge loan financing, along with a written waiver of this contingency. Delivery of verification or proof of sufficient funds or a bridge loan shall not extend the closing date for this Offer. If Buyer fails to deliver verification or proof of sufficient funds or a bridge loan, and a written waiver of this contingency this Offer shall be null and void and earnest money returned to Buyer.

➤ Is this acceptable?

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.

- ★ **Looking at this provision caused the DSPS Committee launch into a discussion of when and if the buyer could provide a copy of the offer on the buyer's house to the buyer's seller. What does that mean with regard to the confidentiality protections in license law?**

Does it mean any provisions where you talk about delivering a copy of an offer to some else, even if not a buyer in competition for the buyer's property, would need to include language similar to the following?

Buyer and Seller are aware that Wis. Admin. Code § REEB 24.12 prohibits a licensed real estate agent from disclosing any of the terms of one prospective buyer's offer to purchase, exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Buyer and Seller understand that delivery of other bona fide offers must be conducted solely between Buyer and Seller or via their attorneys and cannot involve their respective agents.

A proposal was made by the DSPS Forms Council to include standard language in the Distribution of Information provision to have parties automatically authorize agents to provide copies of offers in situations like a Closing of Sale of Buyer's Property Contingency:

DISTRIBUTION OF INFORMATION. Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) distribute copies of this Offer for Seller to obtain an accepted offer on any property Seller intends to purchase, or for either party to meet or satisfy obligations as required under the terms of another offer to purchase.

This causes concerns under the license law provisions concerning confidentiality.

Wis. Stat. § 452.133 Duties of licensees; prohibitions.

(1) Duties to all parties to a transaction. A firm providing brokerage services to a party to a transaction owes all of the following duties to the party:

...

(d) The duty to keep confidential any information given to the firm in confidence, or any information obtained by the firm that the firm knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law or the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information. The firm shall continue to keep the information confidential after the transaction is complete and after the firm is no longer providing brokerage services to the party.

(6) Waiver of duties. The duties imposed by subs. (1), (2) (a), (am), (b), and (c), (4), and (5) may not be waived.

Wis. Admin. Code § REEB 24.12 Confidentiality of offers.

(1) Except as provided in sub. (2), a licensee acting as a principal or an agent in a real estate or business opportunity transaction shall not disclose any of the terms of one prospective buyer's offer to purchase, exchange agreement or option contract proposal to any other prospective buyer or to any person with the intent that this information be disclosed to any other prospective buyer. Licensees shall encourage all prospective buyers to submit their best offers. A licensee may, but is not required to, disclose information known by the licensee regarding the existence of other offers on the property, the fact that a seller has accepted an offer, that the offer is subject to contingencies and that the offer is subject to a clause requiring removal of certain contingencies upon the occurrence of an event such as receipt, acceptance or conditional acceptance of another offer.

Some comments by various attorneys, who are not all in agreement on all of the following:

The REEB 24.12 rule, in my opinion, is to stop competitive advantage between buyers on the same property. It would prohibit the broker delivery in escalation clause situations because two buyers are attempting to purchase same property. REEB 24 however would have no bearing in the context of a seller asking for the buyer's offer. The seller is seeking information about the strength of their buyer's offer which is subject to sale.

The 452 rule is the one that could be applicable to the buyer's expectations of confidentiality. As a buyer would I think my offer is going to be shared with my seller's seller? My first thought is no, at least not without my express permission.

Looking at the § 452.133(6) issue, which explicitly states the section on confidentiality can't be waived. Admittedly (6) is expressly contrary to the potential for a person, whose interest may be adversely affected, to authorize disclosure. My read, when there is an offer, if either party expects confidentiality, unless they are both persons whose interest is adversely affected, you can't get a waiver.

I believe the average buyer is under the impression their offer terms are not going to be shared with anyone that may be competing with them. To highlight this fact, I have even been pressed by agents and buyers about having to put information in the financing contingency – they feel that is too personal. Therefore, I'm pretty sure they would argue a reasonable person believes the offer terms are confidential at least when it involves a competitor. This alone – this general impression in Wisconsin that offers are private and confidential -- speaks to a reason why the proposed language may not fly.

Part of the chatter at Forms Council was assuming the terms and conditions of the offer were confidential, that then the buyer's offer could not give specific authorization because it is not adverse to them to

disclose a copy of their offer. That begs the question: if it is not adverse to anyone then is the offer confidential to begin with?

Do we assume that the terms and conditions of an offer always are confidential? Or is there just certain information that is confidential? Or does that depend upon context?

In the listing contract the focus is particular information -- it provides:

■ **CONFIDENTIALITY NOTICE TO CLIENTS:** The Firm and its agents will keep confidential any information given to the Firm or its agents in confidence, or any information obtained by the Firm and its agents that a reasonable person would want to be kept confidential, unless the information must be disclosed by law or you authorize the Firm to disclose particular information. The Firm and its agents shall continue to keep the information confidential after the Firm is no longer providing brokerage services to you.

The following information is required to be disclosed by law:

- 1) Material Adverse Facts, as defined in section 452.01 (5g) of the Wisconsin statutes (see lines 195-198).
- 2) Any facts known by the Firm and its agents that contradict any information included in a written inspection report on the property or real estate that is the subject of the transaction.

To ensure that the Firm and its agents are aware of what specific information you consider confidential, you may list that information below (see lines 147-148). At a later time, you may also provide the Firm with other information you consider to be confidential.

CONFIDENTIAL INFORMATION: _____

NON-CONFIDENTIAL INFORMATION (The following may be disclosed by the Firm and its agents):

Assume the whole of the offer is confidential to the buyer's buyer even though the provision in § 452.133 was intended to apply to specific facts or information. Is the buyer's buyer a "person whose interests may be adversely affected by the disclosure" so they can give authorization? We don't really know who a "person whose interests may be adversely affected by the disclosure" is. Would it be anyone with regard to whom the information in the offer is private or confidential? If we assume that all offers are automatically confidential, do we assume that all parties are automatically a "person whose interests may be adversely affected by the disclosure"?

It would seem there has been no definitive interpretation of what the language "the person whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular information" in § 452.133(1)(d) means and there is a general impression that the public will generally believe the terms of their offers are confidential in Wisconsin, at least to the extent that no one seems secure in relying upon that language as a green light to adopt the proposed additional language for the Distribution of Information provision.

DSPS Committee: What do you think of all of this? They believe that language in a REEB form would not be challenged by the REEB and not likely by others even though this area of confidentiality is not 100% clear. They modified the Distribution of Information section at lines 315-322 as follows, although they will think about it and may modify the language. They did not intend that this authorize giving copies of offers in price escalation or acceleration situations.

Lines 315-327, Distribution of Information

DISTRIBUTION OF INFORMATION Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry; **and (iv) distribute copies of this Offer in order for Seller to obtain an accepted offer on any property Seller intends to purchase, or for either Party to meet or satisfy obligations as required under the terms of another offer to purchase.**

- **WRA Forms Committee: What do you think of this? The WRA Forms Committee suggests the language change shown below and believes the language added above arguably would allow an agent to provide a copy of another buyer's offer in a price escalation/acceleration scenario – in direct contradiction to Wis. Admin. Code § REEB 24.12(1).**

DISTRIBUTION OF INFORMATION Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry; **and (iv) distribute copies of this Offer in order for Seller to obtain-meet the terms of an accepted offer on any property Seller intends to purchase, or for either Party to meet or satisfy obligations as required under the terms of another offer to purchase.**

- **Do you want the bump clause to remain part of the Closing of Buyer's Property Contingency or separate? WRA Forms Committee says separate.**

Bump Clause – Lines 383-396:

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 worse – 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.

The DSPS Forms Committee looked at this and worked on the following rough draft of what they preferred.

➤ **The WRA Forms Committee reviewed the drafts of the Bump Clause, indicated they prefer the check boxes to the blank line with prompts and the following was their proposal:**

☐ **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.

➤ **Should this provision be made so that it can be used with other contingencies in addition to the Closing of Buyer's Property Contingency? The WRA Forms Committee says yes. They also suggested moving the time element to the top of the provision so it will not be lost:**

☐ **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 the documentation listed below within _____ hours ("72" if left blank) of Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

(1) ~~W~~ritten waiver of the Closing of Buyer's Property Contingency and _____ (name other contingencies subject to the Bump Clause, if any); and

(2) Any documentation checked below:

☐ 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, etc.)]

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

➤ **The above language is in the draft. DSPS Committee said yes.**

Here are some further tweaks:

☐ **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 the documentation listed below **within _____ hours ("72" if left blank) after Buyer's Actual Receipt of said notice**, this Offer shall be null and void. Buyer must deliver the following:

(1) Written waiver of the Closing of Buyer's Property Contingency if line XXX is marked;

(2) Written waiver of _____ (name other **contingencies subject to the Bump Clause**, if any); and

(3) Any **of the following** checked below:

☐ 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, **change closing date**, etc.)]

- **Is this acceptable or are there other suggestions and ideas? The WRA Forms Committee agrees with this. Does the DSPS Forms Committee concur?**

Secondary Offer – Lines 397-403:

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.

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.

- **The DSPS Forms Committee was fine with the existing language shown first above with the five-day default added. The WRA Forms Committee prefers a seven-day default. Is this acceptable. The DSPS Forms Committee agreed to a seven-day default, which is now shown in the draft.**

Title Evidence section – Lines 411-443:

First of all, the language highlighted in **yellow** below was been referred to the smart title attorneys with the Wisconsin Land Title Association.

TITLE EVIDENCE

Lines 395-407:

■ **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) 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 the current language or would be amenable to returning to the 1999 version of this section. The 1999 language is shown in tracking here in tracking:

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~~, general taxes levied in the year of closing and _____

~~(insert other allowable exceptions from title, if any provided none of the foregoing prohibit present use of the Property)~~, which constitutes merchantable title for purposes of this transaction.

- ★ This takes out the reference to the RECR and by doing so opens the door to possible lawsuits based upon the seller's warranty of title, which might rarely occur when other theories of redress are not available or less profitable.

In the older (1999) listing contract, the offer to purchase and the deed, the seller guarantees (warrants) that the title will be transferred free and clear of liens and encumbrances except for (paraphrasing) local ordinances, building codes and subdivision restrictions, which do not prohibit the current use of the property. If the use of the property, like an illegal bedroom, violates one of these then it would violate the Conveyance of Title section: "Upon payment of the purchase price, Seller shall convey the Property by warranty deed(...) 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, general taxes levied in the year of closing and _____ (provided none of the foregoing prohibit present use of the Property), which constitutes merchantable title"

If a seller added an illegal bedroom in the attic, the seller's warranty will arguably be violated because the current use of the property (a bedroom in the attic) is prohibited under the local building code. The present use of the bedroom is illegal, so it is not an exception to the warranty of title because the building code does prohibit the present use of the property. Because of that the addition was made to the list of exceptions for "present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate

Condition Report and in this Offer.” The problem is that neither the RECR nor the Offer are part of the chain of title, so this becomes meaningless once you get past the first transaction.

- **The WRA Forms Committee said to leave this Conveyance of Title provision as it is now. Are there other suggestions and ideas? The DSPS Forms Committee agreed to leaving it as it is now.**

The WLTA suggests the following modifications for lines 410-414:

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

- **The WRA Forms Committee agrees to these changes. The DSPS Forms Committee agrees.**

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 title 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.

Lines 433-442: Timing for delivery of title commitment and objections

- ~~PROVISION DELIVERY OF MERCHANTABLE TITLE:~~ For purposes of closing, title evidence shall be acceptable if the required title insurance commitment is delivered to Buyer’s attorney or Buyer ~~no later than~~ _____ days (“15” if left blank) (after acceptance)(prior to closing) [STRIKE ONE] (“after acceptance” if neither is stricken). ~~losing,~~ showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines ~~326-335xxx-xxx~~, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.
- **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title ~~by the time set for closing~~ within five days of delivery of the title commitment to Buyer or Buyer’s attorney. In such event, Seller shall have a reasonable time, but not exceeding ~~45-_____ 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 making it so the title is provided a short time before closing and any objections to title may bleed over the closing date and likely require extension of closing:

- ~~DELIVERYPROVISION 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 ~~45-___~~ 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? The WRA Forms Committee agrees with the DELIVERY OF MERCHANTABLE TITLE section changes. The DSPS Forms Committee agrees and this language is now in the draft.**
- **The WRA Forms Committee believes the TITLE NOT ACCEPTABLE FOR CLOSING should be left as it is in the existing WB-11 because the time frames are too short for resolving title objections. That language is as follows:**

■ **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. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

- **Does this work or are there other suggestions and ideas? The DSPS Forms Committee agreed and this language is now in the draft.**

Special Assessments/Other Expenses: Lines 444-453:

The idea here is to define what "levied" means. Here is the general statute on the subject. Note there are other statutes for specific circumstances that may give a slightly different result, but this covers the majority:

Wis. Stat. § 66.0703 Special assessments, generally.

(8)(a) After the hearing upon any proposed work or improvement, the governing body may approve, disapprove or modify, or it may rerefer the report prepared under subs. (4) and (5) to the designated officer or employee with directions to change the plans and specifications and to accomplish a fair and equitable assessment.

(b) If an assessment of benefits is made against any property and an award of compensation or damages is made in favor of the same property, the governing body shall assess against or award in favor of the property only the difference between the assessment of benefits and the award of damages or compensation.

(c) When the governing body finally determines to proceed with the work or improvement, it shall approve the plans and specifications and adopt a resolution directing that the work or improvement be carried out and paid for in accordance with the report as finally approved.

(d) The city, town or village clerk shall publish the final resolution as a class 1 notice, under ch. 985, in the assessment district and a copy of the resolution shall be mailed to every interested person whose post-office address is known, or can be ascertained with reasonable diligence.

(e) When the final resolution is published, all work or improvements described in the resolution and all awards, compensations and assessments arising from the resolution are then authorized and made, subject to the right of appeal under sub. (12).

■ **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-adopted and published a final resolution describing the planned improvements and the assessment of benefits.

- **Does this work or are there other suggestions and ideas? The WRA Forms Committee is agreeable to this language. The DSPS Forms Committee agreed and this language is now in the draft.**

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? The WRA Forms Committee prefers the language above and shown in the draft.**

This is as far as the DSPS Forms Committee went – they are in the process of scheduling one or more additional meetings.

Earnest Money Disbursement – Lines 454-483:

EARNEST MONEY

■ **HELD BY:** Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-132 and held in the trust account of the listing Firm (trust account of Buyer's agent's Firm if Property is not listed, Seller's account if no Firm is involved or the account of the third party as designated on line 12), until applied to the purchase price or otherwise disbursed as provided in the Offer.

--OR--

■ **HELD BY:** Unless otherwise agreed, earnest money shall be mailed or delivered in accordance with lines 10-13 and held in the trust account of the listing Firm (trust account of Buyer's agent's Firm if Property is not listed, Seller's account if no Firm is involved or the account of the third party designated party identified on lines 12-13), until applied to the purchase price or otherwise disbursed as provided in the Offer.

- **Which of the above is preferred for the HELD BY provision? The WRA Forms Committee prefers the second option above for the HELD BY subsection.**

Lines 10-13 state:

■ 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; if no firm then Seller).

CAUTION: Should persons other than a Firm hold earnest money, lines xxx-xxx below do not apply. An escrow agreement should be drafted by the Parties or an attorney. If someone other than Buyer makes payment of pays earnest money, consider a special disbursement agreement.

- **The WRA Forms Committee agree to the CAUTION language above, and the changes shown below in tracking clarifying the offer language for earnest money disbursement apply only if the money is held by a Firm.**

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

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

- **The money that may be spent for an attorney is increased to \$750 – should it be more? The WRA Forms Committee said to use a blank line with a default of \$500.**

the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$750 ("\$500" if no entry), prior to disbursement.

- **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 \$500 for the legal services involved if named in a small claims action between the parties? The WRA Forms Committee said no.**

The provisions for earnest money disbursement in the WB-11 do not match with the provisions of Wis. Admin. Code § REEB 18.09:

Disbursement of trust funds.

(1) Proper disbursement. A firm who disburses trust funds from the firm's real estate trust account under any of the following circumstances shall not be deemed to have violated s. 452.14 (3) (i), Stats.:

(a) To the payer upon the rejection, expiration or withdrawal prior to binding acceptance of an offer to purchase, lease, exchange agreement or option on real estate or a business opportunity.

(b) As directed in a written earnest money disbursement agreement signed by all parties having an interest in the trust funds. For the purposes of this subsection, a closing statement is a written earnest money disbursement agreement.

(c) To a court having jurisdiction over a civil action involving all parties having an interest in the trust funds.

(d) As directed by order of a court.

(e) Upon a good faith decision based upon advice of an attorney not representing any party to the contract.

(f) Upon authorization granted within the contract. **THIS IS NOT INCLUDED IN THE OFFER**

(g) As otherwise provided by law.

(2) Notification of disbursement. Prior to making a disbursement of trust funds under sub. (1) (a) where the firm has knowledge that not all parties agree that the rejection or withdrawal occurred prior to binding acceptance, and prior to making a disbursement under sub. (1) (e), (f), and (g) where the firm has knowledge that either party disagrees with the disbursement, the firm shall attempt to notify all parties in writing of the intent to disburse. The notice shall be delivered by certified mail to the parties' last known addresses and shall state to whom and when the disbursement will be made. The disbursement may not occur until 30 days after the date on which the notice is sent.

Should these be made to match better? Note that according to the rules there is no 60-day waiting period before a firm holding the money can pursue items (1) – (4) as now listed in the WB-11. Technically speaking, something written in a contract between the seller and the buyer does not control the behavior of a firm. The firm needs to comply with statutes and the rules. The 60-day waiting period is a fiction and not binding on the firms holding earnest money although we all behave like that controls.

Just because the parties have these provisions in the offer does not control the legal options the firms have in § REEB 18.09 or mean that the firms have to wait 60 days before pursuing the legal safe harbors in § REEB 18.09 – they don't need the parties' permission before pursuing those safe harbors.

The listing contract says the listing firm is to comply with applicable license law:

EARNEST MONEY If the Firm holds trust funds in connection with the transaction, they shall be retained by the Firm in the Firm's trust account. The Firm may refuse to hold earnest money or other trust funds. Should the Firm hold the earnest money, the Firm shall hold and disburse earnest money funds in accordance with Wis. Stat. Ch. 452 and Wis. Admin. Code Ch. REEB 18. If the transaction fails to close and the Seller requests and receives the earnest money as the total liquidated damages, then upon disbursement to Seller, the earnest money shall be paid first to reimburse the Firm for cash advances made by the Firm on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to the Firm as full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to the Firm shall not terminate this Listing.

In other words, it directs the listing firm to disburse in accordance with license law – nowhere is the 60-day waiting period to be found.

The following draft removes the 60-day waiting period and incorporates in the safe harbor for a disbursement authorization within the Offer.

■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer and the earnest money is held by a firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. ~~If said disbursement agreement has not been delivered to~~ Alternately the Firm holding the earnest money ~~within 60 days after the date set for closing, that Firm~~ may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; ~~or~~ (4) ~~upon authorization granted within this Offer, or (5) any other disbursement as otherwise required or allowed provided~~ by law. The Firm may retain legal services to direct disbursement per (1) or to file an interpleader action ~~per (2)~~ and the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$~~750~~ 500 ("500" if no entry), prior to disbursement.

■ **LEGAL RIGHTS/ACTION:** The Firm's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest money. At least 30 days prior to disbursement per (1), ~~or~~ (4) ~~or~~ (5) above, where the Firm has knowledge that either Party disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disbursement by certified mail. If Buyer or Seller disagree with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with one-to-four dwelling units ~~and certain other earnest money disputes~~. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

- Do we like the revision removing the 60-day delay or should we just leave it in although it is not legally binding? Other alternatives? Although some were in favor of removing the artificial time frame the WRA Forms Committee came to the conclusion they would prefer a 30-day fiction to encourage the parties to resolve their differences on their own, but 60 days is too long to wait.
- Do we like the addition of the safe harbor for written authorization within the Offer? Yes, it applies in instances like with an FHA or VA addendum.
- The following is the DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM section approved by the WRA forms Committee on June 6:

■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer and the earnest money is held by a Firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to the Firm holding the earnest money within 60-30 days after the date set for closing, that Firm may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; ~~or~~ (4) upon authorization granted within this Offer; or (5) any other disbursement as otherwise required or allowed provided by law. The Firm may retain legal services to direct disbursement per (1) or to file an interpleader action per (2)

and [the Firm](#) may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed \$ ("500" if no entry), prior to disbursement.

■ **LEGAL RIGHTS/ACTION:** [The Firm's](#) disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by [the Firm holding the earnest money](#). At least 30 days prior to disbursement per (1). ~~or~~ (4) or (5) above, where the Firm has knowledge that either Party disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to ~~disbursement~~ by certified mail. If Buyer or Seller disagree with [the Firm's](#) proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with one-to-four dwelling units ~~and certain other earnest money disputes~~. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold [the Firm](#) harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of [Safety and Professional Services](#) regulations concerning earnest money. See Wis. Admin. Code Ch. [REEB](#) 18.

Another proposed suggestion submitted to the WRA:

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? The WRA Forms Committee decided to pass on this idea.**

Another similar proposal:

In the event this Offer is terminated by Buyer pursuant to a contingency in 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.

- **Are these acceptable? Other ideas? The WRA Forms Committee decided to pass on this idea.**

Inspections and Testing – Lines 484-498:

- **Please indicate what, if any, changes you believe should be made.**

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

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

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

and testing reports to Seller within ____ days ("four" if left blank) of receipt of each report. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.

The WRA Forms Committee discussed the definition of “test” included in the language above and in **yellow** highlights. The comment was to keep the definition and enforce it. If moisture meters are inspections and not tests, are they accurately reflected on inspection reports? That may be a concern to be addressed with the home inspectors.

From Hottips: The difficulty in certain transactions arises when a home inspector proposes to investigate issues such as lead-based paint (LBP) or moisture content. These investigations may be inspections or tests depending on the methodology used. An XRF machine will determine if there is LBP in a property but it is an inspection because there is no sample taken to arrive at the results. On the other hand, taking paint or dust samples and having them analyzed in a lab would be a test and would require testing authorization. Moisture level investigations will ordinarily be an inspection. Like an XRF machine, a moisture meter takes an electronic reading of the level of moisture that may be present. Generally, no sample is taken and therefore the use of the moisture meter would appear to be authorized under the WB-11's inspection contingency.

- **Are these acceptable? Other ideas? The WRA Forms Committee likes the existing definition of test.**
- **Do we like the timeframe for the provision of inspection reports? No, the WRA Forms Committee says to take the time frame out and leave it as -- promptly**

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 -- see **yellow** highlights above: 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!

- **Which is right? What language should be used? Other ideas? The WRA Forms Committee approves the existing language and did not feel any change was necessary.**

Inspection Contingency – Lines 499-524:

Some proposed changes:

☐ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines xxx-xxx). This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property **after the date on line 1 of this Offer** 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.

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

This contingency shall be deemed satisfied unless Buyer, within _____ days (“20” “15?” if left blank) of acceptance, delivers 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 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

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

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

■ **RIGHT TO CURE:** Seller (shall)(shall not) ~~STRIKE ONE~~ (“shall” if neither is stricken) have a right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within seven (five??) days of Buyer’s delivery of the Notice of Defects stating Seller’s election to cure Defects; (2) curing the Defects in a good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done at least three days prior to closing. 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.

Note the insertion of the word “independent” on line 500.

- **The WRA Forms Committee had some discussion about “independent.” They do not want it included with regard to the home inspectors.**

Note the default timeframe of 20/15 days on line 510.

- **The WRA Forms Committee believes there should be a default of 15 days.**

There also is a clarification to the time frame on line 519 – at least three days prior to closing.

- **Is that a good clarification? Other ideas? The WRA Forms Committee prefers “no later than 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 517 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?

- **What language should be used? Other ideas? The WRA Forms Committee prefers a blank with a ten-day default to maintain consistency with the current offer for those who overlook the blank.**

The draft also shows in tracking (**yellow** highlights above) 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.

- **Is this a good idea? Yes, per the WRA Forms Committee. Other ideas?**

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).

➤ **The WRA Forms Committee says no to this.**

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.

➤ **The WRA Forms Committee says no to this.**

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.

➤ The WRA Forms Committee says no to this. This may go in an addendum if desired.

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.

➤ The WRA Forms Committee says no to this. Lenders dislike and may disallow loans.

The "good and workmanlike manner" discussion has resurfaced! As you may recall we discussed this at the end of 2017/beginning of 2018 and the following are some of the notes:

One discussion thread was that good and workmanlike would entail: (1) permits must be pulled when required, (2) tradesmen must be properly licensed or credentialed, and (3) they must be independent.

Some discussion of sellers who do some of their own work – buyers think that the sellers will cut corners. But what if the seller is a credentialed contractor? Many believe that nonetheless that the seller must hire qualified contractors.

"Good and Workmanlike Manner" means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements.

➤ Do we wish to add this? The WRA Forms Committee says yes, insert in the Inspection Contingency.

There have been a few suggestions to try to help clarify the Inspection Contingency with clearer formatting – here is one attempt:

☐ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines xxx-xxx).

1) This Offer is contingent upon an independent Wisconsin registered home inspector performing a home inspection of the Property after the date on line 1 of this Offer which discloses no Defects.

2) 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 by a specialist, 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).

3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection under 1) or 2) above, provided they occur prior to the deadline specified at line xxx. Follow-up inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

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

This contingency shall be deemed satisfied unless Buyer, within _____ days ("15" if left blank) of acceptance, delivers 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 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

For the purposes of this contingency, Defects (~~see lines xxx-xxx~~) do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer. "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

If Buyer makes timely delivery of the Notice of Defects and written inspection report(s), lines xxx-xxx control.

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

■ **RIGHT TO CURE:** Seller (shall)(shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure the Defects.

(a) If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within seven (five??) ("10" if left blank) days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing. "Good and Workmanlike Manner" means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements.

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.

(b) If Seller does not have the right to cure, this Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s).

- **What parts are good and what is bad? Will reformatting make this easy for parties to understand? Other ideas? The WRA is satisfied with the above. Some of the language changes are in the draft but not the formatting. Below is what the changes and reformatting would be like without tracking:**

INSPECTION CONTINGENCY: This contingency only authorizes inspections, not testing (see lines xxx-xxx).

1) This Offer is contingent upon a Wisconsin registered home inspector performing a home inspection of the Property after the date on line 1 of this Offer which discloses no Defects.

2) 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 by a specialist, 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).

3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection under 1) or 2) above, provided they occur prior to the deadline specified at line xxx. Follow-up inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

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

This contingency shall be deemed satisfied unless Buyer, within _____ days ("15" if left blank) of acceptance, delivers 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 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

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

If Buyer makes timely delivery of the Notice of Defects and written inspection report(s), lines xxx-xxx control.

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

■ **RIGHT TO CURE:** Seller (shall)(shall not) STRIKE ONE ("shall" if neither is stricken) have a right to cure the Defects.

(a) If Seller has the right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within _____ ("10" if left blank) days of Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects; (2) curing the Defects in a good and workmanlike manner; and (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing. "Good and Workmanlike Manner" means work performed by independent, properly licensed or credentialed contractors in accordance with any applicable permit requirements.

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.

(b) If Seller does not have the right to cure, this Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s).

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 540-541:

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? **The WRA Forms Committee says no.**

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-11RevisionDSPS7-30-19