



**MEMORANDUM**

To: Mayor Merkes and Common Council

From: PRD Tungate

Date: January 16, 2013

RE: Woodlands Nature Park Acquisition

We have an accepted offer to purchase for 5.24 acres of land for a new neighborhood park. This acquisition has taken several years to accomplish and will serve the openspace needs of current and future residents on the cities far east side.

The following is a financial summary of the acquisition.

Purchase price at appraised value:	\$123,000
WDNR approved grant:	\$ 60,098
City Share (from Parkland Dedication Fund*) 209-0703-553-80-02	\$ 62,902

\*Current fund balance is \$176,937.90

**WB-13 VACANT LAND OFFER TO PURCHASE**

1 **BROKER DRAFTING THIS OFFER ON** 1/16/13 [DATE] IS (AGENT OF SELLER) (AGENT OF BUYER) (DUAL AGENT) ~~STRIKE TWO~~

2 **GENERAL PROVISIONS** The Buyer, CITY OF MENASHA

3 offers to purchase the Property known as [Street Address] PART OF PARCEL # 7-00815-85

4 In the CITY of MENASHA, County of CALUMET

5 Wisconsin, (Insert additional description, if any, at lines 179 - 187 or attach as an addendum, line 188), on the following terms:

6 ■ **PURCHASE PRICE:** ONE HUNDRED TWENTY THREE THOUSAND

7 Dollars (\$ 123,000.00).

8 ■ **EARNEST MONEY** of \$ 0 accompanies this Offer and earnest money of \$ 0

9 will be paid within \_\_\_\_\_ days of acceptance.

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

11 ■ **ADDITIONAL ITEMS INCLUDED IN PURCHASE PRICE:** Seller shall include in the purchase price and transfer, free and clear of

12 encumbrances, all fixtures, as defined at lines 15 - 18 and as may be on the Property on the date of this Offer, unless excluded at line 14,

13 and the following additional items: NONE

14 ■ **ITEMS NOT INCLUDED IN THE PURCHASE PRICE:** \_\_\_\_\_

15 A "Fixture" is defined as an item of property which is physically attached to or so closely associated with land so as to be treated as part

16 of the real estate, including, without limitation, physically attached items not easily removable without damage to the Property, items

17 specifically adapted to the Property, and items customarily treated as fixtures including but not limited to all: perennial crops; garden

18 bulbs; plants; shrubs and trees. CAUTION: Annual crops are not included in the purchase price unless otherwise agreed at line 13.

19 ■ **ZONING:** Seller represents that the Property is zoned R-1 SINGLE FAMILY RESIDENTIAL

20 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed an identical copy of the Offer, including signatures on

21 separate but identical copies of the Offer. CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider

22 whether short term deadlines running from acceptance provide adequate time for both binding acceptance and performance.

23 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or

24 before WEDNESDAY JANUARY 25, 2013. CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.

25 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices

26 to a Party shall be effective only when accomplished by one of the methods specified at lines 27 - 36.

27 (1) By depositing the document or written notice postage or fees prepaid in the U.S. Mail or fees prepaid or charged to an account with

28 a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery designated at lines 30 or 32 (if any),

29 for delivery to the Party's delivery address at lines 31 or 33.

30 Seller's recipient for delivery (optional): JASON HAEN

31 Seller's delivery address: YAN'S REALTY & CONSTRUCTION OF APPLETON, INC.

32 Buyer's recipient for delivery (optional): GREG KEIL

33 Buyer's delivery address: 140 MAIN ST., MENASHA, WI 54220

34 (2) By giving the document or written notice personally to the Party or the Party's recipient for delivery if an individual is designated at lines 30 or 32.

35 (3) By fax transmission of the document or written notice to the following telephone number:

36 Buyer: (920) 967-5272 Seller: ( )

37 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer (lines

38 179 - 187 or in an addendum per line 188). Occupancy shall be given subject to tenant's rights, if any. Caution: Consider an agreement

39 which addresses responsibility for clearing the Property of personal property and debris, if applicable.

40 **LEASED PROPERTY:** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights under said

41 lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the (written) (oral) ~~STRIKE ONE~~

42 lease(s), if any, are \_\_\_\_\_

43 **PLACE OF CLOSING** This transaction is to be closed at the place designated by Buyer's mortgagee or MENASHA

44 CITY HALL no later than FEBRUARY 28, 2013, unless another date or place is agreed to in writing.

45 **CLOSING PRORATIONS** The following items shall be prorated at closing: real estate taxes, rents, private and municipal charges,

46 property owner's association assessments, fuel and \_\_\_\_\_

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

48 Net general real estate taxes shall be prorated based on (the net general real estate taxes for the current year, if known, otherwise on

49 the net general real estate taxes for the preceding year) ( \_\_\_\_\_ ) ~~STRIKE AND COMPLETE AS APPLICABLE~~

50 \_\_\_\_\_

51 **CAUTION: if proration on the basis of net general real estate taxes is not acceptable (for example, completed/pending**

52 **reassessment, changing mill rate, lottery credits), insert estimated annual tax or other formula for proration.**

53 **PROPERTY CONDITION PROVISIONS**

54 ■ **PROPERTY CONDITION REPRESENTATIONS:** Seller represents to Buyer that as of the date of acceptance Seller has no notice

55 or knowledge of conditions affecting the Property or transaction (see below) other than those identified in Seller's Real Estate Condition

56 Report dated \_\_\_\_\_, which was received by Buyer prior to Buyer signing this Offer and which is made a part of this Offer

57 by reference COMPLETE DATE OR STRIKE AS APPLICABLE and \_\_\_\_\_

58 \_\_\_\_\_ INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT

133 PROPERTY ADDRESS: PART OF PARCEL #7-00815-85 (page 3 of 5, WB-13)

134 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4)

135 date of closing; (5) contingency deadlines **STRIKE AS APPLICABLE** and all other dates and deadlines in this Offer except: \_\_\_\_\_

136 \_\_\_\_\_ If "Time is of the Essence" \_\_\_\_\_

137 applies to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does

138 not apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

139 **DATES AND DEADLINES** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated by excluding

140 the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines

141 expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal

142 law, and other day designated by the President such that the postal service does not receive registered mail or make regular deliveries

143 on that day. Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are

144 calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the

145 calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

146 **THE FINANCING CONTINGENCY PROVISIONS AT LINES 148 - 162 ARE A PART OF THIS OFFER IF LINE 148 IS MARKED,**

147 **SUCH AS WITH AN "X". THEY ARE NOT PART OF THIS OFFER IF LINE 148 IS MARKED N/A OR IS NOT MARKED.**

148  **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a \_\_\_\_\_

149 **INSERT LOAN PROGRAM OR SOURCE** first mortgage loan commitment as described below, within \_\_\_\_\_ days of acceptance of this

150 Offer. The financing selected shall be in an amount of not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_\_\_ years,

151 amortized over not less than \_\_\_\_\_ years. Initial monthly payments of principal and interest shall not exceed \$ \_\_\_\_\_

152 Monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private

153 mortgage insurance premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay a loan fee not to exceed

154 \_\_\_\_\_ % of the loan. (Loan fee refers to discount points and/or loan origination fee, but DOES NOT include Buyer's other closing

155 costs.) If the purchase price under this Offer is modified, the financed amount, unless otherwise provided, shall be adjusted

156 to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain

157 the term and amortization stated above. CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 158 OR 159.

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

159  **ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed \_\_\_\_\_ %.

160 The interest rate shall be fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_ % per year. The maximum

161 interest rate during the mortgage term shall not exceed \_\_\_\_\_ %. Monthly payments of principal and interest may be adjusted

162 to reflect interest changes.

163 **LOAN COMMITMENT:** Buyer agrees to pay all customary financing costs (including closing fees), to apply for financing promptly, and

164 to provide evidence of application promptly upon request by Seller. If Buyer qualifies for the financing described in this Offer or other

165 financing acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline for loan

166 commitment at line 149. Buyer's delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall

167 satisfy the Buyer's financing contingency unless accompanied by a notice of unacceptability. CAUTION: BUYER, BUYER'S LENDER

168 AND AGENTS OF BUYER OR SELLER SHOULD NOT DELIVER A LOAN COMMITMENT TO SELLER WITHOUT BUYER'S PRIOR

169 APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.

170 **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment, Seller may terminate this Offer if Seller

171 delivers a written notice of termination to Buyer prior to Seller's actual receipt of a copy of Buyer's written loan commitment.

172 **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an

173 acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies

174 of lender(s) rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in this Offer, Seller shall then

175 have 10 days to give Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in this Offer and this

176 Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, this Offer shall

177 be null and void. Buyer authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness

178 for Seller financing.

179 **ADDITIONAL PROVISIONS/CONTINGENCIES** PURCHASE IS CONTINGENT UPON

180 BUYER'S RECEIPT OF AWARD OF GRANT FUNDS IN AN

181 AMOUNT NOT LESS THAN \$38,600 FOR PARK LAND ACQUISITION

182 UPON

183 PURCHASE IS CONTINGENT UPON APPROVAL BY THE

184 MENASHA COMMON COUNCIL

185

186

187

188 **ADDENDA:** The attached LEGAL DESCRIPTION & REFERENCE DRAWING is/are made part of this Offer.

189 **TITLE EVIDENCE**

190 **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (or other

191 conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and

192 agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use

193 restrictions and covenants, general taxes levied in the year of closing and \_\_\_\_\_

194 \_\_\_\_\_ (provided none of the foregoing prohibit present use of the Property), which constitutes merchantable title

195 for purposes of this transaction. Seller further agrees to complete and execute the documents necessary to record the conveyance.

268 PROPERTY ADDRESS: PART OF PARCEL # 7-00815-85

269 OPTIONAL PROVISIONS: THE PARAGRAPHS AT LINES 271 - 314 WHICH ARE PRECEDED BY A BOX ARE A PART OF THIS OFFER IF  
270 MARKED, SUCH AS WITH AN "X". THEY ARE NOT PART OF THIS OFFER IF MARKED N/A OR ARE LEFT BLANK.

271  PROPOSED USE CONTINGENCY: Buyer is purchasing the property for the purpose of: \_\_\_\_\_  
272 This Offer is contingent upon Buyer obtaining the following :

273  Written evidence at (Buyer's)(Seller's) STRIKE ONE expense from a qualified soils expert that the Property is free of any subsoil  
274 condition which would make the proposed development impossible or significantly increase the costs of such development.

275  Written evidence at (Buyer's)(Seller's) STRIKE ONE expense from a certified soils tester or other qualified expert that indicates that  
276 the Property's soils at locations selected by Buyer and all other conditions which must be approved to obtain a permit for an acceptable private  
277 septic system for: \_\_\_\_\_ [insert proposed use of Property; e.g., three  
278 bedroom single family home] meet applicable codes in effect as of the date of this offer. An acceptable system includes all systems approved  
279 for use by the State for the type of property identified at line 277. An acceptable system does not include a holding tank, privy, composting  
280 toilet or chemical toilet or other systems (e.g. mound system) excluded in additional provisions or an addendum per lines 179 - 188.

281  Copies at (Buyer's)(Seller's) STRIKE ONE expense of all public and private easements, covenants and restrictions affecting the  
282 Property and a written determination by a qualified independent third party that none of these prohibit or significantly delay or increase  
283 the costs of the proposed use or development identified at lines 271 to 272.

284  Permits, approvals and licenses; as appropriate, or the final discretionary action by the granting authority prior to the issuance  
285 of such permits, approvals and licenses at (Buyer's)(Seller's) STRIKE ONE expense for the following items related to the proposed  
286 development \_\_\_\_\_

287  Written evidence at (Buyer's)(Seller's) STRIKE ONE expense that the following utility connections are located as follows ( e.g.,  
288 on the Property, at the lot line across the street, etc.): electricity \_\_\_\_\_; gas \_\_\_\_\_; sewer  
289 \_\_\_\_\_; water \_\_\_\_\_; telephone \_\_\_\_\_; other \_\_\_\_\_

290  This proposed use contingency shall be deemed satisfied unless Buyer within \_\_\_\_\_ days of acceptance delivers  
291 written notice to Seller specifying those items of this contingency which cannot be satisfied and written evidence substantiating why each  
292 specific item included in Buyer's notice cannot be satisfied.

293  MAP OF THE PROPERTY: This Offer is contingent upon (Buyer obtaining)(Seller providing) STRIKE ONE a map of the Property prepared  
294 by a registered land surveyor, within \_\_\_\_\_ days of acceptance, at (Buyer's)(Seller's) STRIKE ONE expense. The map shall identify the legal  
295 description of the Property, the Property's boundaries and dimensions, visible encroachments upon the Property, the location of improvements,  
296 if any, and:

297  STRIKE AND COMPLETE AS APPLICABLE STRIKE AND COMPLETE AS APPLICABLE Additional map features  
298 which may be added include, but are not limited to: specifying how current the map must be; staking of all corners of the Property; identifying  
299 dedicated and apparent streets, lot dimensions, total acreage or square footage, easements or rights-of-way. **CAUTION: Consider the cost**  
300 **and the need for map features before selecting them.** The map shall show no significant encroachment(s) or any information materially  
301 inconsistent with any prior representations to Buyer. This contingency shall be deemed satisfied unless Buyer, within five days of the earlier  
302 of: 1) Buyer's receipt of the map, or 2) the deadline for delivery of said map, delivers to Seller, and to listing broker if Property is listed, a copy  
303 of the map and a written notice which identifies the significant encroachment or the information materially inconsistent with prior representations.  
304  INSPECTION CONTINGENCY: This Offer is contingent upon a qualified independent inspector(s) conducting an inspection(s), at  
305 Buyer's expense, of the Property and \_\_\_\_\_

306  This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance, delivers to Seller, and to listing broker if Property is listed, a copy of the inspector's  
307 written inspection report and a written notice listing the defects identified in the report to which Buyer objects. This Offer shall be null and  
308 void upon timely delivery of the above notice and report. **CAUTION: A proposed amendment will not satisfy this notice requirement.**

309 Buyer shall order the inspection and be responsible for all costs of inspection, including any inspections required by lender or follow-up to  
310 inspection. Note: This contingency only authorizes inspections, not testing, see lines 98 to 110. For the purposes of this contingency a defect  
311 is defined as any condition of the Property which constitutes a significant threat to the health or safety of persons who occupy or use the  
312 Property or gives evidence of any material use, storage or disposal of hazardous or toxic substances on the Property. Defects do not include  
313 conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.  
314 This Offer was drafted on \_\_\_\_\_ [date] by [Licensee and Firm] \_\_\_\_\_

316 (X) Gregory M. Keil \_\_\_\_\_ 1/16/13  
317 Buyer's Signature \* Print Name Here: \* GREGORY M. KEIL Social Security No. or FEIN \* \_\_\_\_\_ Date \*

318 (X) ASHA \_\_\_\_\_  
319 Buyer's Signature \* Print Name Here: \* FOR THE CITY OF MENASHA Social Security No. or FEIN \* \_\_\_\_\_ Date \*

320 EARNEST MONEY RECEIPT: Broker acknowledges receipt of earnest money as per line 8 of the above Offer. (See lines 242 - 267)

321 \_\_\_\_\_ Broker (By)

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

325 (X) \_\_\_\_\_ 1-16-13  
326 Seller's Signature \* Print Name Here: \* \_\_\_\_\_ Social Security No. or FEIN \* \_\_\_\_\_ Date \*

327 (X) \_\_\_\_\_  
328 Seller's Signature \* Print Name Here: \* \_\_\_\_\_ Social Security No. or FEIN \* \_\_\_\_\_ Date \*

329 This Offer was presented to Seller by \_\_\_\_\_ on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

330 THIS OFFER IS REJECTED \_\_\_\_\_ THIS OFFER IS COUNTERED [See attached counter] \_\_\_\_\_  
331 Seller Initials \* Date \* Seller Initials \* Date \*

# ADDENDUM B

## FIGURE 1

