



MEMORANDUM

To: Common Council
From: PRD Tungate *BT*
Date: March 13, 2014
RE: Gilbert Shoreline Park Trail Relocation and Pond Acquisition

BACKGROUND

At the January 20, 2014 Common Council meeting, staff was directed to pursue relocation of the Gilbert site trail access and accept the land donation of the duck pond for the new trail access.

ANALYSIS

An offer to purchase (accept as donation) to acquire the duck pond and the land adjacent to the pond is attached. The size of the parcel is approximately .78 acres.

It is estimated that the pond will be reduced in size by about 20% because of the new trail running along the east side of the pond. From an aesthetic standpoint, staff, the landowners and engineers all believe the new trail alignment along the pond will provide a more welcoming and alternative gateway to the main riverfront trail.

FISCAL IMPACT

R.A. Smith has provided us with the following cost estimates for realigning the trail, dredging the pond and repairing a section of the edge of the pond.

POND DREDGING: \$10,000 includes creating a nominal center depth of 5' and disposing the dredge material on site.

POND EDGE TREATMENT: \$10,000 – place an erosion control mat or similar product along the steeper disturbed edge of the new pond. The mat would allow vegetation to grow through it and would be easy to maintain.

ADDED TRAIL LENGTH COST: \$39,796 includes ground gravel paving and labor to build the trail around the pond versus running it along the west edge off East Central's parking lot.

TOTAL COST FOR TRAIL RELOCATION AND POND ACQUISITION/ENHANCEMENTS:
\$59,796

Staff supports the additional investment in this project to enhance the overall outcome of the park project and to make the Gilbert site more attractive for redevelopment. We will have a firm overall project cost when bids are returned. It is our expectation that this project will be fully funded by grant funds, in kind labor/materials, sponsorships, parkland dedication funds and possibly contributions from TID #11, with no anticipated impact on the general property tax levy

RECOMMENDATION

Staff recommends that the Common Council accept the property donation and approve the trail access relocation and pond improvements.

WB-13 VACANT LAND OFFER TO PURCHASE

1 **BROKER DRAFTING THIS OFFER ON** 3/12/14 [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 LOT 3 OF CSM 6153

4 _____ in the CITY of MENASHA, County of WINNEBAGO

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:** \$1.00 (One dollar)

7 _____ Dollars (\$ _____)

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

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:** NONE

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 I-2 GENERAL INDUSTRIAL DISTRICT

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 MARCH 21, 2014. 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): _____

31 Seller's delivery address: PJC GROUP, LLC 430 AHNAP STREET, MENASHA, WI 54952

32 Buyer's recipient for delivery (optional): _____

33 Buyer's delivery address: 140 MAIN STREET, MENASHA, WI 54952

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) 967-3651 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 CITY
44 HALL no later than MARCH 31, 2014 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) (_____)

50 _____). ~~STRIKE AND COMPLETE AS APPLICABLE~~

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.

59 A "condition affecting the Property or transaction" is defined as follows:

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- 60 (a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property
61 or the present use of the Property;
- 62 (b) completed or pending reassessment of the Property for property tax purposes;
- 63 (c) government agency or court order requiring repair, alteration or correction of any existing condition;
- 64 (d) any land division involving the subject Property, for which required state or local approvals had not been obtained;
- 65 (e) any portion of the Property being in a 100 year floodplain, a wetland or a shoreland zoning area under local, state or federal laws;
- 66 (f) conditions constituting a significant health or safety hazard for occupants of Property;
- 67 (g) underground or aboveground storage tanks on the Property for storage of flammable or combustible liquids including but not limited to
68 gasoline and heating oil which are currently or which were previously located on the Property; **NOTE: Wis. Adm. Code, Chapter**
69 **Comm 10 contains registration and operation rules for such underground and aboveground storage tanks.**
- 70 (h) material violations of environmental laws or other laws or agreements regulating the use of the Property;
- 71 (i) high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property;
- 72 (j) any portion of the Property being subject to, or in violation of, a Farmland Preservation Agreement under a County Farmland Preservation
73 Plan or enrolled in, or in violation of, a Forest Crop, Woodland Tax, Managed Forest, Conservation Reserve or comparable program;
- 74 (k) boundary disputes or material violation of fence laws (Wis. Stats. Chapter 90) which require the erection and maintenance of legal
75 fences between adjoining properties where one or both of the properties is used and occupied for farming or grazing purposes;
- 76 (l) wells on the Property required to be abandoned under state regulations (Wis. Adm. Code NR 112.26) but which are not abandoned;
- 77 (m) cisterns or septic tanks on the Property which are currently not servicing the Property;
- 78 (n) subsoil conditions which would significantly increase the cost of the development proposed at lines 271-272, if any, including, but not limited to
79 to, subsurface foundations, organic or non-organic fill, dumpsites or containers on Property which contained or currently contain toxic or
80 hazardous materials, high groundwater, soil conditions (e.g. low load bearing capacity) or excessive rocks or rock formations on the Property;
- 81 (o) a lack of legal vehicular access to the Property from public roads;
- 82 (p) prior reimbursement for corrective action costs under the Agricultural Chemical Cleanup Program; (Wis. Stats. §94.73.)
- 83 (q) other conditions or occurrences which would significantly increase the cost of the development proposed at lines 271 to 272 or
84 reduce the value of the Property to a reasonable person with knowledge of the nature and scope of the condition or occurrence.
- 85 ■ **PROPERTY DIMENSIONS AND SURVEYS:** Buyer acknowledges that any land dimensions, total square footage/acreage figures,
86 or allocation of acreage information, provided to Buyer by Seller or by a broker, may be approximate because of rounding or other
87 reasons, unless verified by survey or other means. **CAUTION: Buyer should verify land dimensions, total square footage/acreage**
88 **figures or allocation of acreage information if material to Buyer's decision to purchase.**
- 89 ■ **ISSUES RELATED TO PROPERTY DEVELOPMENT:** WARNING: If Buyer contemplates developing Property or a use other than the
90 current use, there are a variety of issues which should be addressed to ensure the development or new use is feasible. Municipal and zoning
91 ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses and therefore should
92 be reviewed. Building permits, zoning variances, Architectural Control Committee approvals, estimates for utility hook-up expenses, special
93 assessments, charges for installation of roads or utilities, environmental audits, subsoil tests, or other development related fees may need
94 to be obtained or verified in order to determine the feasibility of development of, or a particular use for, a property. Optional contingencies
95 which allow Buyer to investigate certain of these issues can be found at lines 271 - 314 and Buyer may add contingencies as needed in
96 addenda (see line 188). Buyer should review any plans for development or use changes to determine what issues should be addressed
97 in these contingencies.
- 98 ■ **INSPECTIONS:** Seller agrees to allow Buyer's inspectors reasonable access to the Property upon reasonable notice if the inspections
99 are reasonably necessary to satisfy the contingencies in this Offer. Buyer agrees to promptly provide copies of all such inspection
100 reports to Seller, and to listing broker if Property is listed. Furthermore, Buyer agrees to promptly restore the Property to its original
101 condition after Buyer's inspections are completed, unless otherwise agreed in this Offer. An "inspection" is defined as an observation
102 of the Property which does not include testing of the Property, other than testing for leaking LP gas or natural gas used as a fuel source,
103 which are hereby authorized.
- 104 ■ **TESTING:** Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property.
105 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
106 or other analysis of these materials. If Buyer requires testing, testing contingencies must be specifically provided for at lines 179 - 187 or
107 in an addendum per line 188. Note: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose
108 of the test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of
109 the contingency (e.g., Buyer's obligation to return the Property to its original condition). Seller acknowledges that certain inspections or tests
110 may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural Resources.
- 111 ■ **PRE-CLOSING INSPECTION:** At a reasonable time, pre-approved by Seller or Seller's agent, within 3 days before closing, Buyer shall
112 have the right to inspect the Property to determine that there has been no significant change in the condition of the Property, except for
113 changes approved by Buyer.
- 114 ■ **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING:** Seller shall maintain the Property until the earlier of closing or
115 occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior
116 to closing, the Property is damaged in an amount of not more than five per cent (5%) of the selling price, Seller shall be obligated to repair
117 the Property and restore it to the same condition that it was on the day of this Offer. If the damage shall exceed such sum, Seller shall
118 promptly notify Buyer in writing of the damage and this Offer may be canceled at option of Buyer. Should Buyer elect to carry out this
119 Offer despite such damage, Buyer shall be entitled to the insurance proceeds relating to the damage to the Property, plus a credit towards
120 the purchase price equal to the amount of Seller's deductible on such policy. However, if this sale is financed by a land contract or a
121 mortgage to Seller, the insurance proceeds shall be held in trust for the sole purpose of restoring the Property.
- 122 ■ **FENCES** Wisconsin Statutes section 90.03 requires the owners of adjoining properties to keep and maintain legal fences in equal
123 shares where one or both of the properties is used and occupied for farming or grazing purposes. **CAUTION: Consider an agreement**
124 **addressing responsibility for fences if Property or adjoining land is used and occupied for farming or grazing purposes.**
- 125 ■ **DELIVERY/RECEIPT** Unless otherwise stated in this Offer, any signed document transmitted by facsimile machine (fax) shall be treated
126 in all manner and respects as an original document and the signature of any Party upon a document transmitted by fax shall be considered
127 an original signature. Personal delivery to, or actual receipt by, any named Buyer or Seller constitutes personal delivery to, or actual receipt
128 by Buyer or Seller. Once received, a notice cannot be withdrawn by the Party delivering the notice without the consent of the Party receiving
129 the notice. A Party may not unilaterally reinstate a contingency after a notice of a contingency waiver has been received by the other Party.
130 **The delivery provisions in this Offer may be modified when appropriate (e.g., when mail delivery is not desirable (see lines 25 - 36)).**
131 Buyer and Seller authorize the agents of Buyer and Seller to distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies
132 and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA).

133 PROPERTY ADDRESS: PART OF LOT 30 FCSM 6153 [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 _____ %. The initial interest rate shall
160 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** 1. LEGAL DESCRIPTION OF PROPERTY
180 TO BE PURCHASED IS ATTACHED AS ADDENDUM A.
181 2. THIS OFFER IS SUBJECT TO APPROVAL BY THE MENASHA
182 COMMON COUNCIL

188 **ADDENDA:** The attached _____ 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 _____
195 _____ (provided none of the foregoing prohibit present use of the Property), which constitutes merchantable title
196 for purposes of this transaction. Seller further agrees to complete and execute the documents necessary to record the conveyance.

197 ■ **FORM OF TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the
 198 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. **CAUTION: IF TITLE**
 199 **EVIDENCE WILL BE GIVEN BY ABSTRACT, STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**

200 ■ **PROVISION OF MERCHANTABLE TITLE:** Seller shall pay all costs of providing title evidence. For purposes of closing, title evidence
 201 shall be acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than 3 business
 202 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
 203 merchantable, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and
 204 exceptions, as appropriate. **CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE**
 205 **COMMITMENT PRIOR TO CLOSING OR A "GAP ENDORSEMENT" WHICH WOULD INSURE OVER LIENS FILED BETWEEN THE**
 206 **EFFECTIVE DATE OF THE COMMITMENT AND THE DATE THE DEED IS RECORDED.**

207 ■ **TITLE ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by
 208 the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and
 209 the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer
 210 shall have 5 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended
 211 accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does
 212 not extinguish Seller's obligations to give merchantable title to Buyer.

213 ■ **SPECIAL ASSESSMENTS:** Special assessments, if any, for work actually commenced or levied prior to date of this Offer shall be
 214 paid by Seller no later than closing. All other special assessments shall be paid by Buyer. **CAUTION: Consider a special agreement**
 215 **if area assessments, property owner's association assessments or other expenses are contemplated.** "Other expenses" are one-
 216 time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to curb, gutter,
 217 street, sidewalk, sanitary and stormwater and storm sewer (including all sewer mains and hook-up and interceptor charges), parks, street
 218 lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. § 66.55(1)(c) & (f).

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

222 **DEFAULT**

223 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
 224 material failure to perform any obligation under this Offer is a default which may subject the defaulting party to liability for damages or
 225 other legal remedies.

226 If **Buyer defaults**, Seller may:

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

230 If **Seller defaults**, Buyer may:

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

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

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

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

242 **EARNEST MONEY**

243 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker (buyer's agent
 244 if Property is not listed or seller if no broker is involved), until applied to purchase price or otherwise disbursed as provided in the Offer.

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

247 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance
 248 from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest
 249 money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according
 250 to a written disbursement agreement signed by all Parties to this Offer (Note: Wis. Adm. Code § RL 18.09(1)(b) provides that an offer
 251 to purchase is not a written disbursement agreement pursuant to which the broker may disburse). If said disbursement agreement has
 252 not been delivered to broker within 60 days after the date set for closing, broker may disburse the earnest money: (1) as directed by
 253 an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the
 254 earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other disbursement required or allowed by law.
 255 Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and broker may deduct from the
 256 earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to disbursement.

257 ■ **LEGAL RIGHTS/ACTION:** Broker's disbursement of earnest money does not determine the legal rights of the Parties in relation to this
 258 Offer. Buyer's or Seller's legal right to earnest money cannot be determined by broker. At least 30 days prior to disbursement per (1)
 259 or (4) above, broker shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or Seller disagree with broker's
 260 proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over
 261 all earnest money disputes arising out of the sale of residential property with 1- 4 dwelling units and certain other earnest money disputes.
 262 Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties
 263 agree to hold the broker harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or
 264 applicable Department of Regulation and Licensing regulations concerning earnest money. See Wis. Adm. Code Ch. RL 18. **NOTE:**
 265 **WISCONSIN LICENSE LAW PROHIBITS A BROKER FROM GIVING ADVICE OR OPINIONS CONCERNING THE LEGAL RIGHTS**
 266 **OR OBLIGATIONS OF PARTIES TO A TRANSACTION OR THE LEGAL EFFECT OF A SPECIFIC CONTRACT OR CONVEYANCE.**
 267 **AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS REQUIRED.**

268 PROPERTY ADDRESS: PART OF LOT 3 OF CSM 6153 [page 5 of 5, WB-13]

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** 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 _____ which discloses no defects as defined below. This contingency shall be deemed satisfied
307 unless Buyer within _____ days of acceptance delivers to Seller, and to listing broker if Property is listed, a copy of the inspector's
308 written inspection report and a written notice listing the defects identified in the report to which Buyer objects. This Offer shall be null and
309 void upon timely delivery of the above notice and report. **CAUTION: A proposed amendment will not satisfy this notice requirement.**
310 Buyer shall order the inspection and be responsible for all costs of inspection, including any inspections required by lender or follow-up to
311 inspection. Note: This contingency only authorizes inspections, not testing, see lines 98 to 110. For the purposes of this contingency a defect
312 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
313 Property or gives evidence of any material use, storage or disposal of hazardous or toxic substances on the Property. Defects do not include
314 conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.
315 This Offer was drafted on 3-12-14 [date] by [Licensee and Firm] _____

316 (x) _____
317 Buyer's Signature ▲ Print Name Here: ► Social Security No. or FEIN ▲ Date ▲

318 (x) _____
319 Buyer's Signature ▲ Print Name Here: ► 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) _____
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 ▲

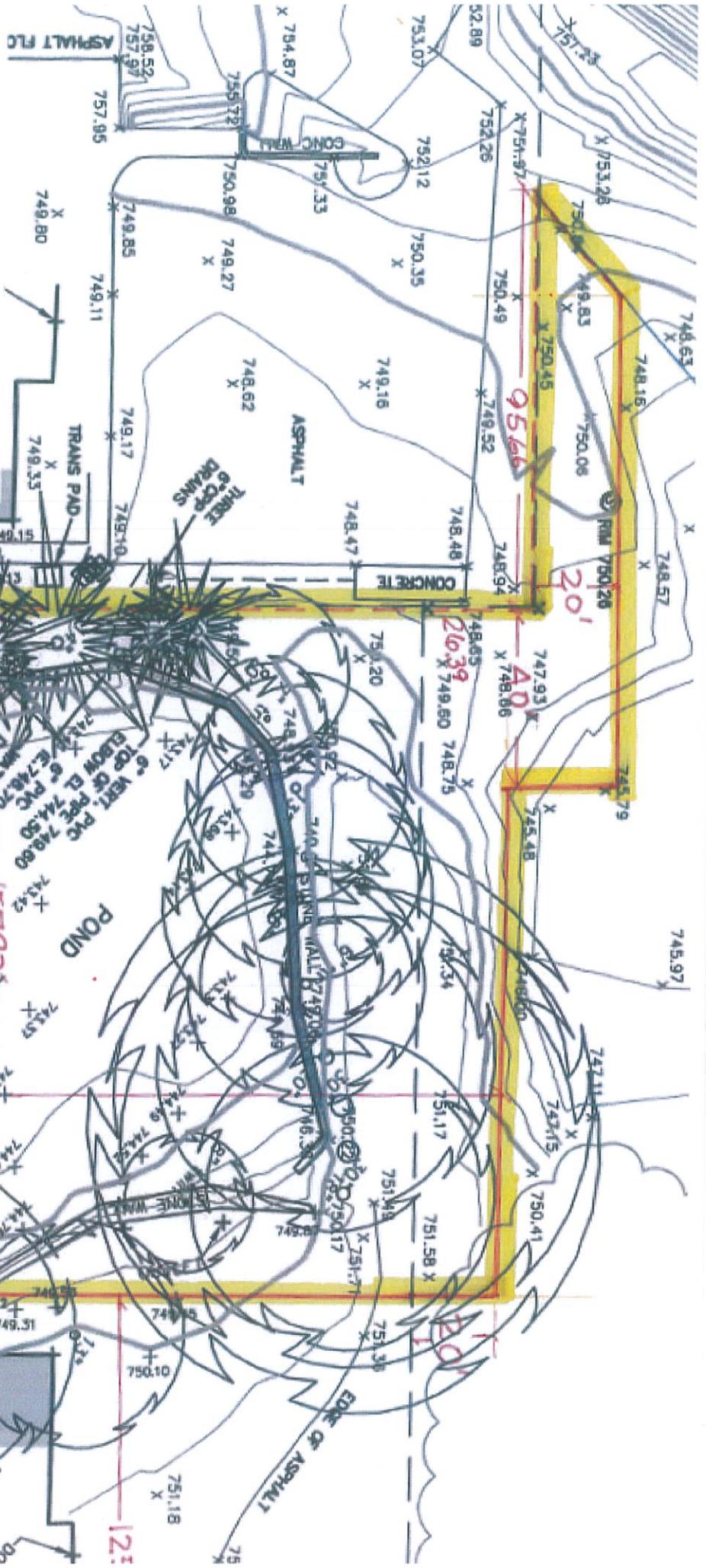
329 This Offer was presented to Seller by _____ on _____, at _____ a.m./p.m.

330 THIS OFFER IS REJECTED _____ THIS OFFER IS COUNTERED [See attached counter] _____
331 Seller Initials▲ Date▲ Seller Initials▲ Date▲

Addendum A

Legal Description of Pond Parcel

That part of the SE 1/4 of the NE 1/4 of Section 22, T20N, R17E in the City of Menasha, Winnebago County, Wisconsin commencing at the SW corner of Lot 3 of CSM 6153 recorded as Document No. 1635579, Winnebago County R.O.D., thence continuing N43°21'59"W 230.86 feet north to the NE corner of Lot 7 of CSM 6723 recorded as Document No. 16355759, Winnebago County R.O.D., thence S46°37'00"W 95.66 feet to a point of intersection with Outlot 5 of CSM 6723, thence N6°28'06"E to a point 20 feet north of and perpendicular to the north line of said Lot 7, thence N46°37'00"E to a point 46.39 feet north and 40 feet east of the NE corner of Lot 3 of CSM 6153, thence S43°21'59"E 26.39 feet to a point, thence N46°37'00"E 117.90 feet to a point, thence S43°21'59"E 214.47 feet to a point, thence S46°37'00"W 10 feet to a point, thence S43°21'59"E 10 feet to the south line of Lot 3 of CSM 6153, thence S46°37'00"W 147.90 feet to the point of beginning containing 0.78 acres, more or less.



Trail Lot - Estimated Area

Area, sf	Notes
35,443.81	Primary Pond Area from Lot 3 with 20 feet in Lot 4
(100.00)	Less Sign Area
255.60	Rectangle to Lot 7 corner
2,713.20	20 ft Strip to 60' easement
(241.80)	Less triangular area
38,070.81 sf	
0.87 acres	

754.88
754.88