

15-518

**WB-15 COMMERCIAL OFFER TO PURCHASE**

1 **LICENSEE DRAFTING THIS OFFER ON** \_\_\_\_\_  **[DATE] IS (AGENT OF BUYER)**

2 ~~(AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) **STRIKE THOSE NOT APPLICABLE**~~

3 **GENERAL PROVISIONS** The Buyer, Manitowoc Public Utilities, a municipal utility organized under Chapter 66 of the Wisconsin Statutes

4 \_\_\_\_\_, offers to purchase the Property known as [Street Address] \_\_\_\_\_

5 937 South 5th Street (See attached Exhibit A for further legal description) in the City \_\_\_\_\_

6 of Manitowoc, County of Manitowoc, Wisconsin \_\_\_\_\_

7 (Insert additional description, if any, at lines 109-115 or 277-286 or attach as an addendum per line 479), on the following terms:

8  **PURCHASE PRICE:** Six Hundred Thousand and No/100 Dollars \_\_\_\_\_ Dollars (\$ 600,000.00 ).

9  **EARNEST MONEY** of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be  
10 mailed, or commercially or personally delivered within \_\_\_\_\_ days of acceptance to listing broker or

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

12  **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price the Property, all Fixtures on the Property on the date of this Offer  
13 not excluded at lines 20-22, and the following additional items: None

14 All personal property included in purchase price will be transferred by bill of sale or \_\_\_\_\_

15  **NOT INCLUDED IN PURCHASE PRICE:** N/A

16 **CAUTION:** Identify trade fixtures owned by tenant, if applicable, and Fixtures that are on the Property (see lines 303-310) to be excluded  
17 by Seller or which are rented and will continue to be owned by the lessor.

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

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

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

22 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before  
23 \_\_\_\_\_ at 5:00 p.m. C.S.T. Seller may keep the Property on the market and accept

24 secondary offers after binding acceptance of this Offer.

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

26 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (  ) ARE PART OF THIS OFFER ONLY IF  
27 THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A" OR ARE LEFT BLANK.

28 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices to a  
29 Party shall be effective only when accomplished by one of the methods specified at lines 37-54.

30 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line 38 or 39.

31 Seller's recipient for delivery (optional): William A. Reiss, Jr., President

32 Buyer's recipient for delivery (optional): Nilaksh Kothari, General Manager

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

34 Seller: ( 920 ) 457-4417 Buyer: ( 920 ) 686-4397

35  (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery  
36 service, addressed either to the Party, or to the Party's recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at  
37 line 47 or 48.

38  (4) **U.S. Mail:** depositing the document or written notice postage prepaid in the U.S. Mail, addressed either to the Party, or to the Party's  
39 recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at line 47 or 48.

40 Delivery address for Seller: Attn: Contract Administrator, 4111 East 37th Street North, Wichita, KS 67220

41 Delivery address for Buyer: 1303 South 8th Street, PO Box 1090, Manitowoc, WI 54221-1090

42  (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line 53 or 54. If this is a  
43 consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes,  
44 each consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and  
45 electronic signatures in the transaction, as required by federal law.

46 E-Mail address for Seller (optional): reissw@kochind.com and crcccontractadmin@kochind.com

47 E-Mail address for Buyer (optional): nkothari@mpu.org

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

57 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge  
58 of Conditions Affecting the Property or Transaction (lines 101-215) other than those identified in Seller's disclosure report dated \_\_\_\_\_  
59 and Real Estate Condition Report, if applicable, dated \_\_\_\_\_, which was/were received by Buyer prior to Buyer  
60 signing this Offer and which is/are made a part of this offer by reference **COMPLETE DATES OR STRIKE AS APPLICABLE** and  
61 \_\_\_\_\_

62 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S).**

63 **CAUTION:** If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. §  
64 709.03 may be required. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real  
65 estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied  
66 the Property). Buyer may have rescission rights per Wis. Stat. § 709.05.

67 **CLOSING** This transaction is to be closed no later than August 31, 2015  
68 \_\_\_\_\_ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

69 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes,  
70 rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, fuel and none other  
71 \_\_\_\_\_

72 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**  
73 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.  
74 Real estate taxes shall be prorated at closing based on [CHECK BOX FOR APPLICABLE PRORATION FORMULA]:

- 75  The net general real estate taxes for the preceding year, or the current year if available (Net general real estate taxes are defined as  
76 general property taxes after state tax credits and lottery credits are deducted) (NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED)
- 77  Current assessment times current mill rate (current means as of the date of closing)
- 78  Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if  
79 known, multiplied by current mill rate (current means as of the date of closing)
- 80

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

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

89 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 109-115  
90 or 277-286 or in an addendum attached per line 479. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all  
91 debris and personal property except for personal property belonging to current tenants, or that sold to Buyer or left with Buyer's consent.  
92 Occupancy shall be given subject to tenant's rights, if any.

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

96 \_\_\_\_\_ . Insert additional terms, if any, at lines 109-115 or 277-286 or attach as an addendum per line 479.  
97 **ESTOPPEL LETTERS:** Seller shall deliver to Buyer no later than \_\_\_\_\_ days before closing, estoppel letters dated within  
98 \_\_\_\_\_ days before closing, from each non-residential tenant, confirming the lease term, rent installment amounts, amount of security  
99 deposit, and disclosing any defaults, claims or litigation with regard to the lease or tenancy.

100 **RENTAL WEATHERIZATION** This transaction (is) (is not) **STRIKE ONE** exempt from Wisconsin Rental Weatherization Standards (Wis. Admin.  
101 Code Ch. SPS 367). If not exempt, (Buyer) (Seller) **STRIKE ONE** ("Buyer" if neither is stricken) shall be responsible for compliance, including all  
102 costs, with Wisconsin Rental Weatherization Standards. If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at  
103 closing.

104 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) ~~earnest money payment(s)~~; (2) binding acceptance; (3) occupancy; (4) date of  
105 closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in this Offer except: none other  
106 \_\_\_\_\_ . If "Time  
107 is of the Essence" 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"  
108 does not apply to a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

109 **ADDITIONAL PROVISIONS/CONTINGENCIES** See Addendum A attached to this offer  
110 \_\_\_\_\_  
111 \_\_\_\_\_  
112 \_\_\_\_\_  
113 \_\_\_\_\_  
114 \_\_\_\_\_  
115 \_\_\_\_\_

116  **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: \_\_\_\_\_  
117 \_\_\_\_\_

118 \_\_\_\_\_ [insert proposed use and type and size of building, if applicable; e.g.  
119 restaurant/tavern with capacity of 360 and 3 second floor dwelling units]. The optional provisions checked on lines 123-130 shall be deemed  
120 satisfied unless Buyer delivers to Seller by the deadline(s) set forth on lines 123-130 written notice specifying those items which cannot be  
121 satisfied and written evidence substantiating why each specific item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice,  
122 this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 123-130.

123  **EASEMENTS AND RESTRICTIONS:** This Offer is contingent upon Buyer obtaining, within \_\_\_\_\_ days of acceptance, at  
124 (Buyer's) (Seller's)  **STRIKE ONE** ("Buyer's" if neither is stricken) expense, copies of all public and private easements, covenants and  
125 restrictions affecting the Property and a written determination by a qualified independent third party that none of these prohibit or significantly  
126 delay or increase the costs of the proposed use or development identified at lines 116 to 118.

127  **APPROVALS:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's)  **STRIKE ONE** ("Buyer's" if neither is stricken) expense,  
128 all applicable governmental permits, approvals and licenses, as necessary and appropriate, or the final discretionary action by the granting  
129 authority prior to the issuance of such permits, approvals and licenses, for the following items related to Buyer's proposed use:

130 \_\_\_\_\_  
131 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which significantly increase  
132 the cost of Buyer's proposed use, all within \_\_\_\_\_ days of acceptance of this Offer.

133  **ACCESS TO PROPERTY:** This Offer is contingent upon Buyer obtaining, within \_\_\_\_\_ days of acceptance, at (Buyer's) (Seller's)  
134  **STRIKE ONE** ("Buyer's" if neither is stricken) expense, written verification that there is legal vehicular access to the Property from public roads.

135  **LAND USE APPROVAL:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's)  **STRIKE ONE** ("Buyer's" if neither is stricken)  
136 expense, a  rezoning;  conditional use permit;  license;  variance;  building permit;  occupancy permit;  other \_\_\_\_\_

137 \_\_\_\_\_  **CHECK ALL THAT APPLY**, for the Property for its proposed use described  
138 at lines 116-118 or delivering written notice to Seller if the item(s) cannot be obtained or can only be obtained subject to conditions which  
139 significantly increase the cost of Buyer's proposed use, all within \_\_\_\_\_ days of acceptance.

140  **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing)  **STRIKE ONE** ("Seller providing" if neither is  
141 stricken) a \_\_\_\_\_ survey (ALTA/ACSM Land Title Survey if survey type is not

142 specified) dated subsequent to the date of acceptance of this Offer and prepared by a registered land surveyor, within \_\_\_\_\_ days of  
143 acceptance, at (Buyer's) (Seller's)  **STRIKE ONE** ("Seller's" if neither is stricken) expense. The map shall show minimum of \_\_\_\_\_ acres;  
144 maximum of \_\_\_\_\_ acres, the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon

145 the Property, the location of improvements, if any, and: \_\_\_\_\_  
146 \_\_\_\_\_:  **STRIKE AND COMPLETE AS APPLICABLE** Additional map features

147 which may be added include, but are not limited to: staking of all corners of the Property; identifying dedicated and apparent streets; lot  
148 dimensions; total acreage or square footage; utility installations; easements or rights-of-way. Such survey shall be in satisfactory form and  
149 accompanied by any required surveyor's certificate sufficient to enable Buyer to obtain removal of the standard survey exception on the title policy.

150 **CAUTION: Consider the cost and the need for map features before selecting them. Also consider the time required to obtain the map  
151 when setting the deadline.**

152 This contingency shall be deemed satisfied unless Buyer, within five (5) days of the earlier of: (1) Buyer's receipt of the map; or (2) the deadline for  
153 delivery of said map, delivers to Seller a copy of the map and a written notice which identifies: (1) a significant encroachment; (2) information  
154 materially inconsistent with prior representations; (3) failure to meet requirements stated within this contingency; or (4) the existence of conditions  
155 that would prohibit the Buyer's intended use of the Property described at lines 116-118. Upon delivery of Buyer's notice, this Offer shall be null and  
156 void.

157  **DOCUMENT REVIEW CONTINGENCY:** This Offer is contingent upon Seller delivering the following documents to Buyer within  
158 \_\_\_\_\_ days of acceptance:  **CHECK THOSE THAT APPLY; STRIKE AS APPROPRIATE**

159  Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.

160  A complete inventory of all furniture, fixtures, equipment and other personal property included in this transaction which is consistent with  
161 representations made prior to and in this Offer.

162  Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property to be free and clear  
163 of all liens, other than liens to be released prior to or at closing.

164  Rent roll \_\_\_\_\_

165  Other \_\_\_\_\_

166 \_\_\_\_\_

167 Additional items which may be added include, but are not limited to: building, construction or component warranties, previous environmental site  
168 assessments, surveys, title commitments and policies, maintenance agreements, other contracts relating to the Property, existing permits and  
169 licenses, recent financial operating statements, current and future rental agreements, notices of termination and non-renewal, and assessment  
170 netlees.

171 All documents Seller delivers to Buyer shall be true, accurate, current and complete. Buyer shall keep all such documents confidential and  
172 disclose them to third parties only to the extent necessary to implement other provisions of this Offer. Buyer shall return all documents (originals  
173 and any reproductions) to Seller if this Offer is terminated.

174  **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of the earlier of  
175 receipt of the final document to be delivered or the deadline for delivery of the documents, delivers to Seller a written notice indicating that this

176 contingency has not been satisfied. Such notice shall identify which document(s) have not been timely delivered or do not meet the standard set  
177 forth for the document(s). Upon delivery of such notice, this Offer shall be null and void.

178 **DEFINITIONS**

179 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or written notice  
180 physically in the Party's possession, regardless of the method of delivery.

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

182 a. Defects in structural components, e.g. roof, foundation, basement or other walls.

183 b. Defects in mechanical systems, e.g. HVAC, electrical, plumbing, septic, well, fire safety, security or lighting.

184 c. Underground or aboveground storage tanks presently or previously on the Property for storage of flammable or combustible liquids, including  
185 but not limited to gasoline and heating oil.

186 d. Defect or contamination caused by unsafe concentrations of, or unsafe conditions relating to, lead paint, asbestos, radon, radium in water  
187 supplies, mold, pesticides or other potentially hazardous or toxic substances on the premises.

188 e. Production of or spillage of methamphetamine (meth) or other hazardous or toxic substances on the Property.

189 f. Zoning or building code violations, any land division involving the Property for which required state or local permits had not been obtained,  
190 nonconforming structures or uses, conservation easements, rights-of-way.

191 g. Special purpose district, such as a drainage district, lake district, sanitary district or sewer district, that has the authority to impose  
192 assessments against the real property located within the district.

193 h. Proposed, planned or commenced public improvements which may result in special assessments or otherwise materially affect the Property  
194 or the present use of the Property.

195 i. Federal, state or local regulations requiring repairs, alterations or corrections of an existing condition.

196 j. Flooding, standing water, drainage problems or other water problems on or affecting the Property.

197 k. Material damage from fire, wind, floods, earthquake, expansive soils, erosion or landslides.

198 l. Near airports, freeways, railroads or landfills, or significant odor, noise, water intrusion or other irritants emanating from neighboring property.

199 m. Portion of the Property in a floodplain, wetland or shoreland zoning area under local, state or federal regulations.

200 n. Property is subject to a mitigation plan required under administrative rules of the Department of Natural Resources related to county  
201 shoreland zoning ordinances, which obligates the owner of the Property to establish or maintain certain measures related to shoreland  
202 conditions and which is enforceable by the county.

203 o. Encroachments; easements, other than recorded utility easements; access restrictions; covenants, conditions and restrictions; shared  
204 fences, walls, wells, driveways, signage or other shared usages; or leased parking.

205 p. High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.

206 q. Structure on the Property designated as a historic building, any part of the Property located in a historic district, or burial sites or  
207 archeological artifacts on the Property.

208 r. All or part of the land has been assessed as agricultural land, the owner has been assessed a use value conversion charge or the payment  
209 of a use value conversion charge has been deferred.

210 s. All or part of the Property is subject to, enrolled in or in violation of a certified farmland preservation zoning district or a farmland preservation  
211 agreement, or a Forest Crop, Managed Forest (see disclosure requirements in Wis. Stat. § 710.12), Conservation Reserve or comparable  
212 program.

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

214 u. Government investigation or private assessment/audit (of environmental matters) conducted.

215 v. Other Defects affecting the Property.

216 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the event  
217 occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as a specific number  
218 of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other day designated by the  
219 President such that the postal service does not receive registered mail or make regular deliveries on that day. Deadlines expressed as a specific  
220 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  
221 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  
222 midnight of that day.

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

226 **(Definitions Continued on page 6)**

**IF LINE 228 IS NOT MARKED OR IS MARKED N/A LINES 264-269 APPLY.**

228  **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written \_\_\_\_\_  
229 ~~[INSERT LOAN PROGRAM OR SOURCE]~~ first mortgage loan commitment as described below, within \_\_\_\_\_ days of acceptance of this  
230 Offer. The financing selected shall be in an amount of not less than \$ \_\_\_\_\_ for a term of not less than \_\_\_\_\_ years;  
231 amortized over not less than \_\_\_\_\_ years. Initial monthly payments of principal and interest shall not exceed \$ \_\_\_\_\_. Monthly  
232 payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance  
233 premiums. The mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination fee in an amount  
234 not to exceed \_\_\_\_\_ % of the loan. If the purchase price under this Offer is modified, the financed amount, unless otherwise provided, shall  
235 be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to  
236 maintain the term and amortization stated above.

237 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 238 OR 239.**

238  **FIXED RATE FINANCING:** The annual rate of interest shall not exceed \_\_\_\_\_ %.  
239  **ADJUSTABLE RATE FINANCING:** The initial annual interest rate shall not exceed \_\_\_\_\_ %. The initial interest rate shall be  
240 fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_ % per year. The maximum  
241 interest rate during the mortgage term shall not exceed \_\_\_\_\_ %. Monthly payments of principal and interest may be adjusted to  
242 reflect interest changes

243 ~~If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 100-115 or 277-286~~  
244 ~~or in an addendum attached per line 470.~~

245 ~~NOTE: If purchase is conditioned on buyer obtaining financing for operations or development consider adding a contingency for that~~  
246 ~~purpose.~~

247 ~~■ **BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to~~  
248 ~~provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to~~  
249 ~~Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line 220. Buyer and Seller agree that~~  
250 ~~delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if,~~  
251 ~~after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall~~  
252 ~~accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.~~

253 ~~**CAUTION: The delivered commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. BUYER,**~~  
254 ~~**BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER'S**~~  
255 ~~**AGENT WITHOUT BUYER'S PRIOR WRITTEN APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.**~~

256 ~~■ **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment, Seller may terminate this Offer if Seller delivers~~  
257 ~~a written notice of termination to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written loan commitment.~~

258 ~~■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an~~  
259 ~~acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of~~  
260 ~~lender(s) rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in this Offer, Seller shall then have 10 days~~  
261 ~~to deliver to Buyer written notice of Seller's decision to finance this transaction on the same terms set forth in this Offer, and this Offer shall remain~~  
262 ~~in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, this Offer shall be null and void. Buyer~~  
263 ~~authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.~~

264 ~~■ **IF THIS OFFER IS NOT CONTINGENT ON FINANCING:** Within 7 days of acceptance, a financial institution or third party in control of Buyer's~~  
265 ~~funds shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close. If such written~~  
266 ~~verification is not provided, Seller has the right to terminate this Offer by delivering written notice to Buyer. Buyer may or may not obtain mortgage~~  
267 ~~financing but does not need the protection of a financing contingency. Seller agrees to allow Buyer's appraiser access to the Property for~~  
268 ~~purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this~~  
269 ~~Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing contingency.~~

270  **APPRAISAL CONTINGENCY:** This Offer is contingent upon the Buyer or Buyer's lender having the Property appraised at Buyer's expense  
271 by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date of this Offer indicating an  
272 appraised value for the Property equal to or greater than the agreed upon purchase price. This contingency shall be deemed satisfied unless  
273 Buyer, within \_\_\_\_\_ days of acceptance, delivers to Seller a copy of the appraisal report which indicates that the appraised value is not  
274 equal to or greater than the agreed upon purchase price, accompanied by a written notice of termination.

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

277 **ADDITIONAL PROVISIONS/CONTINGENCIES** See Addendum A attached to this Offer  
278 \_\_\_\_\_  
279 \_\_\_\_\_  
280 \_\_\_\_\_  
281 \_\_\_\_\_  
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285 \_\_\_\_\_  
286 \_\_\_\_\_

**DEFINITIONS CONTINUED FROM PAGE 4**

287 **ENVIRONMENTAL SITE ASSESSMENT:** An "Environmental Site Assessment" (also known as a "Phase I Site Assessment") (see lines 379-395)  
 288 may include, but is not limited to: (1) an inspection of the Property; (2) a review of the ownership and use history of the Property, including a  
 289 search of title records showing private ownership of the Property for a period of 80 years prior to the visual inspection; (3) a review of historic and  
 290 recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property  
 291 (5) an evaluation of results of any environmental sampling and analysis that has been conducted on the Property; and (6) a review to determine if  
 292 the Property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment  
 293 including the National Priorities List, the Department of Nature Resources' (DNR) Registry of Waste Disposal Sites, the DNR's Contaminated  
 294 Lands Environmental Action Network, and the DNR's Remediation and Redevelopment (RR) Sites Map including the Geographical Information  
 295 System (GIS) Registry and related resources. Any Environmental Site Assessment performed under this Offer shall comply with generally  
 296 recognized industry standards (e.g. current American Society of Testing and Materials "Standard Practice for Environmental Site Assessments"),  
 297 and state and federal guidelines, as applicable.

298 **CAUTION: Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater**  
 299 **or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site**  
 300 **Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or**  
 301 **other site evaluation at lines 100-115 or 277-296 or attach as an addendum per line 470.**

302 **FIXTURE:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or improvements so as to be  
 303 treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises,  
 304 items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs  
 305 and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central  
 306 heating and cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings; awnings;  
 307 attached antennas; garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground  
 308 sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and docks/piers on  
 309 permanent foundations. A Fixture does not include trade fixtures owned by tenants of the Property.

310 **CAUTION: Exclude Fixtures not owned by Seller such as rented fixtures. See lines 20-22.**

311 **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-7.

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

**EARNEST MONEY**

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

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

321 **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from  
 322 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  
 323 disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written  
 324 disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to broker within 60 days after  
 325 the date set for closing, broker may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not  
 326 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;  
 327 or (4) any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader  
 328 action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to  
 329 disbursement.

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

340 **TITLE EVIDENCE**

341 **CONVEYANCE OF TITLE:** Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee's deed if  
342 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  
343 encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility  
344 and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed  
345 in Seller's disclosure report, and Real Estate Condition Report, if applicable, and in this Offer, general taxes levied in the year of closing and  
346 those otherwise agreed to as set forth herein.

347 \_\_\_\_\_  
348 \_\_\_\_\_ which constitutes merchantable title for purposes of this transaction. Seller shall complete and execute the documents  
349 necessary to record the conveyance at Seller's cost and pay the Wisconsin Real Estate Transfer Fee.

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

353 **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a  
354 current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all costs of providing title evidence to Buyer.  
355 Buyer shall pay all costs of providing title evidence required by Buyer's lender.

356 **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's) (Buyer's) ~~STRIKE ONE~~ ("Seller's" if  
357 neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance  
358 commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue  
359 the endorsement. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for  
360 closing (see lines 365-374).

361 **PROVISION OF MERCHANTABLE TITLE:** For purposes of closing, title evidence shall be acceptable if the required title insurance  
362 commitment is delivered to Buyer's attorney or Buyer not more than \_\_\_\_\_ days after acceptance ("15" if left blank), showing title to the  
363 Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 341-348, subject only to liens which  
364 will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as appropriate.

365 **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title within  
366 \_\_\_\_\_ days ("15" if left blank) after delivery of the title commitment to Buyer or Buyer's attorney. In such event, Seller shall have a  
367 reasonable time, but not exceeding \_\_\_\_\_ days ("5" if left blank), from Buyer's delivery of the notice stating title objections, to deliver  
368 notice to Buyer stating Seller's election to remove the objections by the time set for closing. In the event that Seller is unable to remove said  
369 objections, Buyer may deliver to Seller written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does  
370 not waive the objections, Buyer shall deliver written notice of termination and this Offer shall be null and void. Providing title evidence acceptable  
371 for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

372 **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced prior to the date of this  
373 Offer shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.

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

379  **ENVIRONMENTAL EVALUATION CONTINGENCY:** This Offer is contingent upon a qualified independent environmental consultant of  
380 Buyer's choice conducting an Environmental Site Assessment of the Property (see lines 288-302), at (Buyer's) (Seller's) expense ~~STRIKE ONE~~  
381 ("Buyer's" if neither is stricken), which discloses no Defects. For the purpose of this contingency, a Defect (see lines 223-225) is defined to also  
382 include a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the  
383 presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of  
384 contaminating the Property due to future migration from other properties. Defects do not include conditions the nature and extent of which Buyer  
385 had actual knowledge or written notice before signing the Offer.

386 **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance,  
387 delivers to Seller a copy of the Environmental Site Assessment report and a written notice listing the Defect(s) identified in the Environmental Site  
388 Assessment report to which Buyer objects (Notice of Defects).

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

390 **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  
391 cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating  
392 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  
393 work done within 3 days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written  
394 Environmental Site Assessment report and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: (a) Seller delivers written  
395 notice that Seller will not cure or (b) Seller does not timely deliver the written notice of election to cure.

396 **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  
397 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  
398 remedies.

399 If Buyer defaults, Seller may:

400 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or

401 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages.

402 If Seller defaults, Buyer may:

403 (1) sue for specific performance; or

404 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

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

406 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the  
407 courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above.  
408 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.

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

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

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

419 **CAUTION: Buyer should verify total square footage or acreage figures and land, building or room dimensions, if material to Buyer's**  
420 **decision to purchase.**

421 **BUYER'S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer  
422 shall have the right to walk through the Property to determine that there has been no significant change in the condition of the Property, except for  
423 ordinary wear and tear and changes approved by Buyer, and that any Defects Seller has agreed to cure have been repaired in the manner agreed  
424 to by the Parties.

425 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** Seller shall maintain the Property until the earlier of closing or occupancy of  
426 Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If, prior to closing, the Property  
427 is damaged in an amount of not more than five percent (5%) of the selling price, Seller shall be obligated to repair the Property and restore it to  
428 the same condition that it was on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and  
429 restoration. If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at  
430 option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating  
431 to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However,  
432 if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sold purpose of restoring the  
433 Property.

434 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons registered with the  
435 registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by telephone at  
436 (608) 240-5830.

437 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of this Offer. An  
438 "inspection" is defined as an observation of the Property which does not include an appraisal or testing of the Property, other than testing for  
439 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  
440 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  
441 materials. Seller agrees to allow Buyer's inspectors, testers, appraisers and qualified third parties reasonable access to the Property upon  
442 advance notice, if necessary to satisfy the contingencies in this Offer. Buyer and licensees may be present at all inspections and testing. Except  
443 as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property.

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

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



450  **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 437-440). This Offer is contingent upon  
451 a qualified independent inspector(s) conducting an inspection(s) of the Property which discloses no Defects. This Offer is further contingent upon  
452 a qualified independent inspector or qualified independent third party performing an inspection of \_\_\_\_\_  
453 \_\_\_\_\_ (list any Property feature(s) to be separately inspected, e.g., dumpsite, etc.) which  
454 discloses no Defects. Buyer shall order the inspection(s) and be responsible for all costs of inspection(s). Buyer may have follow-up inspections  
455 recommended in a written report resulting from an authorized inspection performed provided they occur prior to the deadline specified at line 461.  
456 Each inspection shall be performed by a qualified independent inspector or qualified independent third party.

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

459 For the purpose of this contingency, Defects (see lines 223-226) do not include conditions the nature and extent of which Buyer had actual  
460 knowledge or written notice before signing the Offer.

461  **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of acceptance,  
462 delivers to Seller a copy of the inspection report(s) and a written notice listing the Defect(s) identified in the inspection report(s) to which Buyer  
463 objects (Notice of Defects).

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

465  **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  
466 cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating  
467 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  
468 work done within 3 days prior to closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written  
469 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  
470 not cure or (b) Seller does not timely deliver the written notice of election to cure.

471  **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at  
472 \_\_\_\_\_, no later than \_\_\_\_\_, If Seller accepts a bona fide secondary offer,  
473 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  
474 Contingency and \_\_\_\_\_  
475 \_\_\_\_\_

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

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

480 This Offer was drafted by [Licensee and Firm] \_\_\_\_\_  
481 \_\_\_\_\_ on Drafted on \_\_\_\_\_, 2015

482 Buyer Entity Name (if any): Manitowoc Public Utilities

483 (X) \_\_\_\_\_  
484 Buyer's/Authorized Signature ▲ Print Name/Title Here ► Nilaksh Kothari, General Manager Date ▲ \_\_\_\_\_

485 (X) \_\_\_\_\_  
486 Buyer's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

487  **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 10 of the above Offer.

488 \_\_\_\_\_ Broker (By) \_\_\_\_\_

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

492 Seller Entity Name (if any): The C. Reiss Coal Company

493 (X) \_\_\_\_\_  
494 Seller's/Authorized Signature ▲ Print Name/Title Here ► William A. Reiss, Jr., President Date ▲ \_\_\_\_\_

495 (X) \_\_\_\_\_  
496 Seller's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

497 This Offer was presented to Seller by [Licensee and Firm] \_\_\_\_\_  
498 \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

499 This Offer is rejected \_\_\_\_\_ This Offer is countered [See attached counter] \_\_\_\_\_  
500 Seller Initials ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_ Seller Initials ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_



## ADDENDUM A TO COMMERCIAL OFFER TO PURCHASE

SELLER: The C. Reiss Coal Company  
BUYER: Manitowoc Public Utilities  
PROPERTY: 937 South 5<sup>th</sup> Street, City of Manitowoc, Manitowoc County, Wisconsin

This "**Addendum**" supplements the terms and provisions set out in the preprinted Commercial Offer to Purchase dated \_\_\_\_\_, 2015, and is an integral part thereof. In the event any terms and conditions set forth in the preprinted Commercial Offer to Purchase conflict with the terms and conditions of this Addendum, this Addendum shall control. The preprinted Commercial Offer to Purchase and this Addendum are collectively referred to herein as the "**Offer**."

1. **Property.** The Property which is subject to this Offer is described as 937 South 5<sup>th</sup> Street, City of Manitowoc, Manitowoc County, Wisconsin, Parcel #052-000-235-010.00, together with a perpetual non-exclusive easement related to Parcel #052-000-222-011.00 (See attached Exhibit A).

2. **Closing Date.** The Closing Date shall occur no later than August 31, 2015, or earlier as agreed by the parties.

3. **Conditions to Closing.** Each party's obligations to conclude this transaction is also contingent upon the following:

(a) Inspection of the Property and Related Documentation.

(i) Within ten (10) business days of the Acceptance Date, Seller shall provide Buyer with any and all of the following in Seller's possession or control as of the date hereof (collectively, the following documents and information shall be referred to as the "**Property Information**"), if any:

A. Any previously prepared surveys, environmental studies and reports including any and all Phase I or Phase II reports previously conducted for the Property, soil investigation reports, and any other report associated with tests or investigations performed on the Property which are in the Seller's possession or are readily available to Seller at no material cost or expense to Seller. Seller shall also provide a comprehensive list of all permits and licenses (and pending applications relating thereto) relative to Seller's current operations on the Property. In addition, Seller shall to the best of Seller's Knowledge, provide any and all documents in its possession or control regarding any and all environmental conditions affecting the Property (in accordance with the standards set forth in Section 6 of this Addendum) that meet any one of the following conditions (each a "**Condition**" and collectively the "**Conditions**"):

1. There is a reasonable likelihood that the Conditions will require Buyer to incur remediation, assessments or other costs in excess of \$100,000 for the proposed continued use as a coal storage yard;

2. There is a reasonable likelihood that the Conditions will subject MPU to liability in excess of \$10,000 due to enforcement for violations of applicable Environmental Laws as an owner of the site. For the purposes of this Offer, “**Environmental Law**” means any federal, state, local, municipal, foreign, international, multinational or other administrative order, constitution, law, ordinance, regulation, statute, treaty or principle of common law including, without limitation, natural resource-based theory of action pertaining to the protection of the environment or human health and safety, or the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, Hazardous Substances, and all amendments, modifications and additions thereto. Without limiting the generality of the foregoing, Environmental Laws shall include, without limitation, the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation, and Liability Act, the Federal Emergency Planning and Community Right-to-Know Act, the Federal Toxic Substances Control Act, the Federal Clean Water Act, the Federal Clean Air Act, the Federal Safe Drinking Water Act, the Federal Insecticide Fungicide and Rodenticide Act, the Federal Hazardous Materials Transportation Act, the Federal Occupational Safety and Health Act, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, regulations of the Mine Safety and Health Administration, along with similar or related statutes, regulations, or ordinances of any state department of natural resources or state or local environmental protection agency, as now or at any time hereafter amended or implemented. “**Hazardous Substances**” means any substance, chemical, compound, product, solid, gas, liquid, waste, by product, material, pollutant or contaminant which is hazardous, toxic or otherwise harmful to health, safety, natural resources, wildlife or the environment, including, without limitation, asbestos, polychlorinated biphenyls, radon and urea formaldehyde foam, petroleum and petroleum products, hazardous waste source, by product or special nuclear material, and raw materials which include hazardous constituents, or any other similar substances, or materials which are now, or in the future, included under or regulated by any Environmental Law; or
3. There is a reasonable likelihood that the Conditions will subject MPU to third party damage claims arising from the Conditions in an aggregate amount that exceeds \$100,000.00.

- B. Notices and orders received by Seller from any applicable governmental authority including, without limitation, Wisconsin Department of Natural Resources or Environmental Protection Agency notices and orders, which remain unresolved as of the Acceptance Date.

In the event of termination of this Offer, the documents provided to Buyer as part of the Property Information shall be returned to Seller, and any oral information disclosed to Buyer as part of the Property Information shall remain confidential by Buyer (to the extent allowed by law). The "**Inspection Period**" shall be defined herein as a period that commences on the date Seller delivers to Buyer a written certification that Seller has delivered all of the Property Information in Seller's possession or control to Buyer and ends on the Closing Date. If Seller does not deliver the materials contemplated herein with the written certification within such ten (10) day period, the Inspection Period and Closing Date shall be extended day for day for each day such materials and certification are not timely delivered by Seller.

(ii) During the Inspection Period, Buyer will have the right to perform and complete an examination of the Property and to perform or cause to be performed such studies, reviews and inspections as may be deemed necessary or advisable by Buyer, including, without limitation, physical inspection of the improvements and related systems, title searches, surveys, and engineering assessments, and meetings with the appropriate governmental officials to discuss Buyer's intended use of the Property. Notwithstanding the above, Buyer may not, during the Inspection Period, perform any testing of the Property relating to its soil or groundwater.

(b) Each party's obligation to close this transaction is further contingent upon Buyer obtaining the guaranty of the City of Manitowoc as set forth in the form of Guaranty attached as **Exhibit B**, or in such other form and substance acceptable to Seller, Buyer and the City of Manitowoc, to guaranty the indemnification of Seller as set forth in Section 6(a) should Buyer be unable to satisfy such indemnification obligations

(c) Termination During Inspection Period. Prior to the expiration of the Inspection Period, if Buyer, in its sole discretion, determines that the Property is unsuitable for Buyer's intended use or development, or that it is not satisfied with the contents of the Property Information or the results of tests, reviews and inspections, Buyer may deliver to Seller a written notice stating that it is terminating the Offer (a "**Notice to Cancel**"). Upon timely delivery of a Notice to Cancel this Offer shall be null and void and the parties hereto shall have no further obligations hereunder. Except as otherwise provided herein, if, by the conclusion of the Inspection Period, Buyer has not given Seller a Notice to Cancel, it will be conclusively presumed that Buyer has waived its right to terminate during the Inspection Period with respect to the contingencies set forth in this Section 3.

#### 4. **Title Insurance.**

(a) Title Insurance. Seller, at Seller's expense, shall obtain and deliver to Buyer, within ten (10) days after the Acceptance Date, a current form commitment for an owner's policy of title insurance for the Property issued by a nationally recognized underwriter, (the "**Title Company**") in the full amount of the Purchase Price, covering title to the Property, dated on or after the date hereof (the "**Title Commitment**"), together with a copy of all title exceptions and documents of record referenced in such Title Commitment and any ALTA survey done with respect to the Property (if any). On the Closing Date, at Seller's cost and expense, and as a condition to Buyer's obligation to Close, Seller shall cause the Title Company to issue an owner's title insurance policy (or marked-up title

commitment) pursuant to and in accordance with the Title Commitment as approved by Buyer (all in accordance with Section 4(b) below) insuring fee simple title to the Property in Buyer as of the Closing Date in the amount of the Purchase Price. In addition, Seller, at Seller's expense, shall provide Buyer a GAP endorsement to Buyer's title policy at Closing.

(b) Removal of Defects. Buyer shall, within ten (10) business days after its receipt of the Title Commitment and exception documents (the "**Title Review Period**"), notify Seller of any matters or exceptions disclosed on the Title Commitment that are not acceptable to Buyer. If Buyer does not notify Seller within the Title Review Period that any matters or exceptions are not acceptable to Buyer, then the Title Commitment will be deemed to be approved by the Buyer. If Buyer so notifies Seller that the Title Commitment shows items unacceptable to Buyer, Seller shall have five (5) days thereafter from the date of delivery of Buyer's notice to (1) have the Title Company issue its endorsements (in form reasonably acceptable to Buyer) insuring over such unacceptable items and provide evidence thereof to Buyer; (2) correct any such unacceptable items; or (3) elect to not insure or correct the unacceptable items. If Seller elects to cure such items, the Closing Date shall be reasonably extended as necessary to accommodate such cure provided such period shall not exceed an additional thirty (30) days. If Seller fails to have such items corrected or insured over within said period, or elects within such period not to so insure or correct, or fails to respond within such period, then Buyer may elect within fifteen (15) days thereafter (1) to terminate this Offer by giving a Notice to Cancel (in which event any Earnest Money in connection herewith, shall be promptly returned to Buyer), or (2) to accept the Title Commitment subject to such unacceptable items without any diminution of the Purchase Price.

5. Representations and Warranties. For purposes of the Seller's representations, warranties and disclosure obligations herein, Seller's "**Knowledge**" shall mean that actual knowledge of William A. Reiss, Jr. and David Severson, after reasonable inquiry. Seller represents and warrants the following, which representations and warranties shall be accurate as of the date of the Closing:

(a) Disclosure of Conditions. To the best of Seller's Knowledge, Seller has provided to Buyer all Property Information required under Sections 3(a)(i)(A) and 3(a)(i)(B) above.

(b) Known Actions/Judgments/Etc. Seller has no Knowledge of any actions, judgments, liens, suits, claims or other proceedings pending or threatened against Seller or the Property which might materially affect this transaction, except as disclosed in the Property Information, and Seller has no Knowledge of any facts that would reasonably be expected to result in such an action, judgment, lien, suit, claim or other proceeding.

(c) Known Environmental Issues. Except for those matters disclosed in the Property Information, Seller has no Knowledge of any conditions existing on the Property which represent a violation of applicable Environmental Laws that would reasonably be expected to result in substantial cleanup liability on the owner of the Property assuming it is continued to be used for coal storage. For purposes of this paragraph, "substantial" shall mean a cleanup required by law that is likely to cost in excess of \$100,000.00; and

(d) Waterfront Issues. Seller has no Knowledge of any shore land zoning, flood plain, public trust and/or wetland conditions existing on the Property that is reasonably likely to materially impede Buyer's anticipated use of the Property as a coal storage yard.

(e) As Is Where Is. Buyer acknowledges and agrees that if Buyer accepts the Property in

its current environmental condition and elects to proceed with the purchase of the Property, Buyer will be purchasing the property "AS IS," without any expressed or implied warranty or representations of any kind by Seller except for the representations and warranties expressly set forth herein. Seller will have no liability to Buyer for any existing condition affecting the Property, including without limitation: structural defects or inadequacies, subsoil deficiencies or defects preventing construction or improvements on or to the Property, other soil or drainage problems, or the presence of any dangerous, hazardous, toxic or environmentally sensitive substances, unless Seller had Knowledge of such environmental conditions and did not disclose such matters as required herein. Buyer further acknowledges and agrees that by proceeding with the purchase of the Property, Buyer will be knowingly and voluntarily accepting all risks related to the condition of the Property based on the representations and warranties made by Seller herein. This provision shall not constitute a waiver or release of any of Buyer's rights, if any, to seek remedies against any third parties responsible for any such underlying conditions so long as any such remedy does not create liability for the Seller.

(f) Survival. Seller's representations and warranties set forth herein shall survive the Closing for a period of five (5) years, and any breach of any representation herein shall give Buyer a cause of action against the Seller regardless of any AS IS language set forth in Section 5(e) above.

## 6. Indemnification, Deed Restrictions, and Assumption of Obligations.

(a) Indemnification. Subject to the terms, provisions and conditions herein, to the fullest extent allowed by law, Buyer will assume any alleged liability or responsibility for, and will release, indemnify, defend and hold harmless Seller and its affiliates and their respective employees, officers, directors, shareholders, partners, and members against, any claim, liability, loss, damage, demand, lawsuit, cause of action, strict liability claim, penalty, fine, administrative law action or order, expense (whether arising before or after Closing, and including, without limitation, attorneys' fees and expenses) and/or costs of every kind and character arising out of or in any way incident to (1) any environmental response activities incurred post-closing (including, without limitation, fulfilling any continuing obligations) as required by law to address any environmental conditions on or emanating from the Property, and/or (2) any third party claim relating to any environmental condition on or emanating from the Property (hereinafter, each a "Claim" and collectively "Claims"), except in either case to the extent any such environmental conditions were within Seller's Knowledge and not disclosed to Buyer in violation of this Agreement, provided, however, that any such indemnification, release and hold harmless shall not include any liability relating to any off site location to which soil, waste, or any other material was transported (excluding natural migration) from the Property prior to Closing. Should Seller wish to have Buyer indemnify, release and hold Seller harmless from any Claims, Seller shall provide written notice to Buyer, including as much detail regarding the Claim as in Seller's possession, as promptly and reasonably practical after receipt of notice of any such Claims. Seller shall reasonably cooperate with and assist Buyer with respect to the defense of any such Claims provided, however, that Seller shall not be obligated to incur any third party fees or expenses, and further provided that Buyer shall control all aspects of resolving any such Claims.

(b) Deed Restrictions. The following restrictions and covenants will be appropriately recorded with the deed conveying title from Seller to Buyer (substantially in the form attached as **Exhibit C**), or in a separately recorded document:

(i) Rezoning of Property. Rezoning the Property, or obtaining a variance from applicable zoning, for any other use than industrial use (as defined by the City of Manitowoc's zoning code in effect at such time) shall be prohibited unless the Property is remediated to support such

changed use in accordance with the requirements of the state environmental agency's laws, rules and regulations, and Buyer or its successor in title obtains written confirmation from the state environmental agency that all such remediation has been fully and completed in accordance with all applicable laws, or that no such remediation is necessary for such changed use.

(ii) Right of First Refusal Re: Potential Use of Property or Operations for Buyer. In the event Buyer: (A) decides to utilize the services of a third party on the Property for purposes involving the handling, storage, transport, or sale of petroleum coke, coal, and/or other bulk commodities typically handled by Seller; or (B) decides to make the Property available to a third party for the third party's own use related to the handling, storage, transport, or sale of petroleum coke, coal, and/or other bulk commodities typically handled by Seller, in either event, Buyer shall notify Seller in writing of such intended use and the terms and conditions thereof, and will provide Seller one (1) right of first refusal to, as applicable, serve as the operator for Buyer's intended third party use of the Property, or use the Property for its own use on the same terms and conditions to be provided by or to the third party. This right of first refusal would not apply to any proposed one-time use of the Property for which the activities and operations would not exceed two (2) months in duration and for which there is no reasonably likelihood for such ongoing or future use of the Property to occur thereafter at the time of such one-time use. This right of first refusal shall automatically terminate without any further notice obligation on December 31, 2020. If Seller wishes to exercise its right of first refusal as contemplated herein, it shall provide written notice of such to Buyer within thirty (30) days after Buyer provides Seller with notice of such opportunity and the terms and conditions thereof.

(iii) Restrictions on Soil and Groundwater Use. Restriction on the use of soil and groundwater as set forth in the Final Case Closure with Continuing Obligations dated March 19, 2015 and associated GIS registry (the "**Closure Letter**").

(iv) Post Closing Access Seller and its agents shall have the right to enter the Property at reasonable times upon not less than thirty (30) days advance written notice for the purpose of conducting environmental investigation, cleanup and other remedial or response activities which do not unreasonably interfere with the current use of the Property ("**Access Activities**") in the event that a government agency has determined that Access Activities are required to be conducted by Seller under applicable law. Such notice to be provided by Seller to Buyer shall describe in detail all proposed Access Activities to be performed and shall include copies of relevant written communication from a government agency requiring such Access Activities.

(v) Modifications, Revisions and Termination. Buyer (and any and all successors in title to the Property), agrees to and shall execute and record any further modification, revision or termination of the restriction(s) required by paragraph 6.(b)(iii) of this Addendum ("**Restriction Modifications**") if the Restriction Modifications are reasonably requested by Seller or required by applicable law. For purposes of this paragraph, a Restriction Modification request shall be "reasonable" if necessary to maintain the Closure and will not unreasonably interfere with the use of the Property. If Buyer or such successor in title refuses or fails to execute and record such Restriction Modifications within ten (10) days after request, then Seller is hereby irrevocably appointed as such party's attorney-in-fact to execute and record such Restriction Modifications.

(c) Permit Transfers. Buyer will assume all responsibility for and cost of obtaining and maintaining those permits and licenses as may be necessary or required for Buyer's operation of the Property whether through Buyer's own application or, when possible, through assignment of Seller's current permit or license to Buyer. Seller will, at Buyer's sole cost and expense, provide reasonable



cooperation with Buyer to assign Seller's permits and licenses which are assignable to Buyer.

7. **Miscellaneous.**

(a) **Certificate of Non-Foreign Status.** Seller and Buyer represent and warrant that they are not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended. At closing, Seller and Buyer will complete an appropriate Certificate of Non-Foreign Status confirming same.

(b) **Right to Assign.** Buyer shall have the right to assign this Offer, and its rights and interest herein, to an entity which is owned or controlled by Buyer.

(c) **Signatures.** Signatures to this Offer transmitted by facsimile, by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document will have the same effect as physical delivery of the paper document bearing the original signature.

(d) **Parties Bound.** This Offer shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

(e) **Governing Law and Venue.** The laws of the State of Wisconsin shall govern the validity, construction, enforcement and interpretation of this Offer. Any disputes shall be filed in Manitowoc County, Wisconsin Circuit Court.

(f) **Entirety and Amendments.** This Offer embodies the entire agreement between the parties relating to the Property and may be amended or supplemented only by a written instrument executed by the party against whom enforcement is sought.

(g) **Further Assurances.** The parties covenant and agree that they will execute and deliver such other and further documents and take such additional actions as are reasonably required to carry out, to the fullest extent, the intent and purposes of this Offer.

(h) **Counterparts.** This Offer may be executed in two (2) or more counterparts, each of which, upon execution and delivery as prescribed, shall be deemed an original for all purposes. In proving this Offer, it shall be necessary to account for only one (1) such counterpart signed by the party to be charged.

(i) **Survival, Limitations.** The representations, warranties, covenants, agreements, and indemnities set forth in this Offer shall be certified as valid at Closing and shall survive the Closing.

(j) **Warranty of Authority.** Each person executing this Offer on behalf of Buyer or Seller personally warrants he or she has the requisite authority to do so and that he or she has obtained all necessary consents and approvals for this instrument to be the valid and legally binding obligation of Buyer or Seller, enforceable in accordance with its terms.

(k) **Attorney's Fees.** If either party commences an action to enforce the terms of, or to resolve a dispute concerning, this Offer, the prevailing party in any such action shall be entitled to recover all costs and expenses incurred by such party in connection with such action, including, but not limited to, reasonable attorney's fees and court costs.

(l) Broker's Fees/Disclosure. Each party represents and warrants it has not dealt with a broker, finder or other person or entity in such a manner as to give rise to a claim or entitlement for a commission or other fee with respect to this transaction. Each party shall indemnify and hold harmless the other party from and against any and all claims, costs, damages, expenses, liabilities, and obligations (including, but not limited to, reasonable attorney's fees and expert witness fees) arising as a result of such party's conduct or actions leading to such a claim or entitlement.

(m) Ambiguity. The parties hereto agree that this Offer was prepared after negotiations between the parties hereto, and any ambiguity contained herein shall not be held nor interpreted against the drafter hereof

(n) Capitalized Terms. Except as otherwise defined herein, all capitalized terms shall have that meaning given in the preprinted Commercial Offer to Purchase.

(o) Binding Agreement. Seller and Buyer acknowledge and agree that this Offer is intended to be binding and enforceable and each party waives any right to challenge the enforceability of this Offer based on discretion afforded Buyer in evaluating the fulfillment of the contingencies or conditions contained in this Offer. Buyer covenants and agrees to exercise good faith in seeking to satisfy such contingencies and conditions. Seller acknowledges that such efforts by Buyer will require Buyer to expend time and resources in investigating the Property and that such expenditures constitute good and sufficient consideration to Seller for Seller's acceptance of this Offer. Buyer and Seller also agree that upon waiver of the last of any contingency or condition under this Offer, that this Offer shall be deemed affirmed without inclusion of the waived contingencies or conditions.

SELLER:  
THE C. REISS COAL COMPANY

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_

Name: William A. Reiss, Jr.  
Title: President

BUYER:  
MANITOWOC PUBLIC UTILITIES

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_

Name: Nilaksh Kothari  
Title: General Manager

## EXHIBIT A

### Legal Description of Property

#### Parcel 1

A tract or parcel of land, in Government Lot One (1) of Section Twenty-nine (29), Township Nineteen (19) North, Range Twenty-four (24) East, in the City of Manitowoc, Manitowoc County, Wisconsin, including within its boundaries Blocks Two Hundred Twenty-three (223) and Two Hundred Thirty-four (234) as said Blocks are laid down and shown upon the recorded Plat of the City of Manitowoc; and A part of Block Two Hundred Thirty-five (235), according to the recorded Plat of the City of Manitowoc;

Together with vacated streets or portions of vacated streets abutting the aforesaid Blocks; and part of the accretions to and lying easterly of said Blocks and vacated streets, which said tract or parcel of land is bounded and described as follows:

Beginning at an iron pipe located in the east line of Lake Street (n/k/a South 5th Street), in the City of Manitowoc, which is fifty-five and five-tenths (55.5) feet north, measured along said street line, from an iron pipe set at the point of intersection of said street line, with the southerly line of Quay Street (as it existed on May 23, 1942), as extended easterly across said Lake Street (n/k/a South 5th Street); running thence south from said point of beginning on and along said East line of Lake Street (n/k/a South 5th Street), a distance of four hundred one and one-tenth (401.1) feet to an angle in said street line; thence southwesterly along the southeasterly line of said Lake Street (n/k/a South 5th Street) a distance of four hundred forty-two and five-tenths (442.5) feet to an iron pipe; thence southeasterly along a line making an angle of twenty-one degrees, thirty-six minutes (21° 36') to the left, with an extension of the last described course, a distance of seventy-two and four-tenths (72.4) feet to an iron pipe; thence southeasterly along a line making an angle of sixty-eight degrees, forty-two minutes (68°42') to the left, with an extension of the last described course, a distance of three hundred sixty-two and ninety-five one-hundredths (362.95) feet to an iron pipe; thence northeasterly along a line making an angle of seventy-four degrees, two minutes (74°2') to the left, with an extension of the last described course, a distance of one hundred eighteen and ninety-four one-hundredths (118.94) feet to a point which is distant seventy-five (75) feet southeasterly, measured at right angles, from the southeasterly face of the dock along the northwesterly side of the coal dock slip; thence northeasterly along a line making an angle of fifteen degrees, fifty-six minutes (15° 56') to the left, with an extension of the last described course, and on and along a line which is parallel with and distant seventy-five (75) feet southeasterly, measured at right angles, from said southeasterly face of the dock along the northwesterly side of said coal dock slip, a distance of four hundred ten and sixty-five one-hundredths (410.65) feet; thence northwesterly, at right angles, ten (10) feet; thence northeasterly, at right angles, and on and along a line parallel with and distant sixty-five (65) feet southeasterly, from the southeasterly face of the dock along the northwesterly side of said ferry and coal dock slips, a distance of four hundred fifty and five-tenths (450.5) feet; thence northwesterly, at right angles, sixty-five (65) feet to the point of an angle in the southeasterly face of said dock; thence northwesterly along a line making an angle to the left of six degrees, thirty-eight minutes (6° 38'), with an extension of the last described course, a distance of three hundred forty-five and seventeen one-hundredths (345.17) feet to an iron pipe, thence southwesterly on a line making an angle to the left of twelve degrees, fifty-nine minutes (12° 59') with an extension of the last described course a distance of one hundred eight and six-tenths (108.6) feet to the iron pipe at the point of beginning.

Excepting therefrom the following portions conveyed to the City of Manitowoc:

1) Portion conveyed by Warranty Deed recorded in Volume 2046 of Records, Page 729, as Document No. 980641.

2) Portion conveyed by Warranty Deed recorded in Volume 2377 of Records, Page 135, as Document No. 1047439.

3) Portion conveyed by Warranty Deed recorded in Volume 2377 of Records, Page 141, as Document No. 1047440.

Tax ID No. 052-000-235-010.00

Parcel 2

A perpetual non-exclusive easement for the purpose of storage and handling of coal over: A tract of land located in Government Lot One (1) of Section Twenty-nine (29), Township Nineteen (19) North, Range Twenty-four (24) East, and accretions to and lying easterly of Blocks 223, 234 and 235 of the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin, being more particularly described as follows:

Commencing at the Southwest corner of Block 222 of the Original Plat of the City of Manitowoc, thence S.  $00^{\circ} 12' 12''$  W. (recorded as S.  $01^{\circ} 12' 35''$  E.) 24.55 feet, thence N.  $84^{\circ} 58' 15''$  E. (recorded as N.  $83^{\circ} 35' 02''$  E.) 108.60 feet, thence S.  $82^{\circ} 02' 32''$  E. (recorded as S.  $83^{\circ} 25' 58''$  E.) 345.17 feet, the point of real beginning; thence S.  $80^{\circ} 59' 45''$  E., 44.93 feet, thence S.  $13^{\circ} 56' 15''$  W, 844.62 feet; thence S.  $16^{\circ} 41' 48''$  E., 45.37 feet, thence S.  $29^{\circ} 47' 15''$  W, 15.73 feet, thence N.  $76^{\circ} 10' 45''$  W., 63.58 feet; thence N.  $13^{\circ} 56' 15''$  E., 895.04 feet to the true point of real beginning.

Tax ID No. 052-000-222-011.00

**EXHIBIT B  
FORM OF GUARANTY**

**GUARANTY**

1. **Guaranty.** In consideration of, and as an inducement for The C. Reiss Coal Company (“Company”) entering into that certain “Commercial Offer to Purchase” and Addendum dated \_\_\_\_\_ with Manitowoc Public Utilities (“MPU”), (collectively the “Purchase Agreement”) which Purchase Agreement contained, among other things, certain indemnification obligations by MPU in favor of the Company, the undersigned, City of Manitowoc (“Guarantor”), hereby guarantees the prompt performance and payment when due of the Guaranteed Obligations, subject to the other terms and conditions set forth in this Guaranty. For the purposes of this Guaranty, the “Guaranteed Obligations” means all indemnification obligations, liabilities, and other undertakings of MPU in favor of the Company in accordance with the terms and conditions of the Purchase Agreement. “Guaranteed Obligations” includes all legal fees, costs, and expenses incurred by Company in enforcing the obligations under this Guaranty. This Guaranty is a guaranty of payment and performance and not merely a guaranty of collection.

2. **Waiver.** Guarantor hereby waives: (a) notice of acceptance of this Guaranty, and of the creation or existence of any of the Guaranteed Obligations and of any action by Company in reliance hereon or in connection herewith; (b) presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest with respect to the Guaranteed Obligations; and (c) any requirement that suit be brought against, or any other action by Company be taken against, or any notice of default or other notice be given to, or any demand be made on, MPU or any other person, or that any other action be taken or not taken as a condition to Guarantor's liability for the Guaranteed Obligations or as a condition to the enforcement of this Guaranty against Guarantor.

3. **Guaranty Enforceable.** The liability of Guarantor under this Guaranty shall be irrevocable and enforceable irrespective of: (i) any change in the time, manner, terms, place of payment, or in any other term of all or any of the Guaranteed Obligations, or any other document executed in connection therewith; (ii) any sale, exchange, or transfer of any property related to the Guaranteed Obligations, or any release, amendment, waiver, or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations; (iii) failure, omission, delay, waiver, or refusal by Company to exercise, in whole or in part, any right or remedy held by Company with respect to the Guaranteed Obligations; (iv) any change in the existence, structure, or ownership of Guarantor or MPU, or any insolvency, bankruptcy, reorganization, or other similar proceeding; and (v) any other circumstance that might otherwise constitute a defense available to, or discharge of, Guarantor not available to MPU. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by Company upon the insolvency, bankruptcy, or reorganization of MPU, or any other guarantor or otherwise, all as though such payment had not been made.

4. **Default.** In the event of default by MPU in performance or payment of any indemnification, liability or undertaking in accordance with the terms and conditions of the Purchase Agreement, including, but not limited to, anticipatory breach, insolvency, inability to pay debts as they mature, or assignments for the benefit of creditors or institution of similar proceedings by or against

MPU alleging any of these events, Guarantor shall promptly pay and/or perform all Guaranteed Obligations.

**5. Representations and Warranties.**

- A) Guarantor is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and has full power to execute, deliver, and perform this Guaranty.
- B) The execution, delivery, and performance of this Guaranty have been and remain duly authorized by all necessary action and do not contravene any provision of law or of Guarantor's organizational documents or any contractual restriction binding on Guarantor or its assets.
- C) All consents, authorizations, and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery, and performance of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with any governmental authority is required in connection with the execution, delivery, or performance of this Guaranty.
- D) This Guaranty constitutes the legal, valid, and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.
- E) Guarantor has adequate means to obtain from MPU, on a continuing basis, information concerning the financial condition of MPU, and is not relying on Company to provide such information, now or in the future.
- F) Guarantor represents that MPU is a subsidiary of Guarantor or, if MPU is not a subsidiary of Guarantor, that Guarantor will benefit from MPU being able to enter into Transactions with Company.

**6. Notice.** Notices under this Guaranty shall be deemed received if sent to the addresses specified below or at such other address as may be designated from time to time by Guarantor or Company: (i) if given by personal delivery, on the day received (if such day is a business day, or if such day is not a business day, the next succeeding business day); (ii) if sent by overnight express delivery, upon date of actual delivery as verified by confirmation from the courier company; or (iii) if sent by facsimile transmission or e-mail, on the day of receipt (if such day is a business day, or if such day is not a business day, the next succeeding business day) as confirmed by sender's transmission report, if sent by facsimile, or read receipt, if sent by e-mail.

To Guarantor:

City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220  
Attention: Finance Director

With a CC to:  
City of Manitowoc  
900 Quay Street  
Manitowoc, WI 54220  
Attention: City Attorney

To Company:  
The C. Reiss Coal Company  
4111 East 37<sup>th</sup> Street North  
Wichita, KS 67220  
Attention: Contract Administrator  
Email: CRCCcontractadmin@kochind.com

7. **Successors and Assigns.** Guarantor may not assign or delegate its obligations hereunder without the prior written consent of Company, which consent may be withheld in Company's sole and absolute discretion. Company may, upon written notice to Guarantor, assign its rights hereunder without the consent of Guarantor. Subject to the foregoing, this Guaranty shall be binding upon Guarantor, its successors and assigns, and shall be for the benefit of Company, its successors and assigns.

8. **Choice of Law; Severability.** This Guaranty shall be governed by, and construed in accordance with the laws of the State of Wisconsin and applicable federal law. However, if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

9. **Waiver of Jury Trial.** Guarantor and Company each waive, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action, or proceeding relating to this Guaranty.

10. **Jurisdiction.** With respect to any suit, action or proceedings relating to this Guaranty (“**Proceedings**”), each of Guarantor and Company hereby irrevocably (i) submits to the exclusive jurisdiction of Manitowoc County, Wisconsin Circuit Court, or the United States District Court for the Eastern District of Wisconsin; and (ii) waives any objection that it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have personal jurisdiction over such party.

11. **Third Party Beneficiaries.** Nothing herein, express or implied, is intended to or shall confer upon any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Guaranty.

12. **Entire Agreement.** This Guaranty, together with the Purchase Agreement, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and shall supersede and revoke all previous and prior guarantees issued by Guarantor on behalf of MPU to Company prior to the date hereof, if any.

\* \* \* \* \*

IN WITNESS WHEREOF, the foregoing instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**GUARANTOR:  
CITY OF MANITOWOC**

**By:** \_\_\_\_\_  
**Name: Justin Nickels**  
**Title: Mayor**

**By:** \_\_\_\_\_  
**Name: Jennifer Hudon**  
**Title: City Clerk**



**EXHIBIT C  
Form of Deed**

State Bar of Wisconsin Form 1-2003  
**WARRANTY DEED**

Document Number

Document Name

**THIS DEED**, made between The C. Reiss Coal Company, 4111 East 37th Street North Wichita, KS 67220 ("Grantor", whether one or more), and City of Manitowoc - Manitowoc Public Utilities, 1303 South 8<sup>th</sup> Street, PO Box 1090, Manitowoc, WI 54221-1090 ("Grantee", whether one or more).

Grantor, for a valuable consideration, conveys to Grantee the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in Manitowoc County, State of Wisconsin ("Property") (if more space is needed, please attach addendum):

Property Address:  
937 South 5<sup>th</sup> Street  
Manitowoc, WI 54220

*See Attached Addendum A*

Recording Area

Name and Return Address

Attorney Andrew J. Steimle  
Steimle Birschbach, LLC  
PO Box 2225  
Manitowoc, WI 54221-2225

052-000-235-010.00 and 052-000-222-011.00  
Parcel Identification Number (PIN)

This    is not    homestead property.  
(is) (is not)

Grantor warrants that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances except: *[Permitted Title Exceptions to be inserted.]*

The Property conveyed herein shall be subject to the following restrictions, which restriction shall run with the land:

1. Rezoning the Property, or obtaining a variance from applicable zoning, for any other use than industrial use (as defined by the City of Manitowoc's zoning code in effect at such time) shall be prohibited unless the Property is remediated to support such changed use in accordance with the requirements of the state environmental agency's laws, rules and regulations, and Grantee or its successor in title obtains written confirmation from the state environmental agency that all such remediation has been fully and completed in accordance with all applicable laws, or that no such remediation is necessary for such changed use.

2. In the event Grantee or its successor in title: (A) decides to utilize the services of a third party on the Property for purposes involving the handling, storage, transport, or sale of petroleum coke, coal, and/or other bulk commodities typically handled by Grantor; or (B) decides to make the Property available to a third party for the third party's own use related to the handling, storage, transport, or sale of petroleum coke, coal, and/or other bulk commodities typically handled by Grantor, in either event, Grantee shall notify Grantor in writing of such intended use and the terms and conditions thereof, and will provide Grantor one (1) right of first refusal to, as applicable, serve as the operator for Grantee's intended third party use of the Property, or use the Property for its own use on the same terms and conditions to be provided by or to the third party. This right of first refusal would not apply to any proposed one-time use of the Property for which the activities and operations would not exceed two (2) months in duration and for which there is no reasonably likelihood for such ongoing or future use of the Property to occur thereafter at the time of such one-time use. This right of first refusal shall automatically terminate without any further notice obligation on December 31, 2020. If Grantor wishes to exercise its right of first refusal as contemplated herein, it shall provide written notice of such to Grantee within thirty (30) days after Grantee provides Grantor with notice of such opportunity and the terms and conditions thereof.

3. Use of soil and groundwater on the Property shall be restricted as set forth in the Final Case Closure with Continuing Obligations dated March 19, 2015 and associated GIS registry (the "Closure").

4. Grantor and its agents shall have the right to enter the Property at reasonable times upon not less than thirty (30) days advance written notice for the purpose of conducting environmental investigation, cleanup and other remedial or response activities which do not unreasonably interfere with the current use of the Property ("Access Activities") in the event that a government agency has determined that Access Activities are required to be conducted by Grantor under applicable law. Such notice to be provided by Grantor to Grantee shall describe in detail all proposed Access Activities to be performed and shall include copies of relevant written communication from a government agency requiring such Access Activities.

5. Grantee and its successors in title shall execute and record any further modification, revision or termination of the restriction(s) required by Section 3. above ("Restriction Modifications") if the Restriction Modifications are reasonably requested by Grantor or required by applicable law. For purposes of this paragraph, a Restriction Modification request shall be "reasonable" if necessary to maintain the Closure and will not unreasonably interfere with the use of the Property. If Grantee or such successor in title refuses or fails to execute and record such Restriction Modifications within ten (10) days after request, then Grantor is hereby irrevocably appointed as such party's attorney-in-fact to execute and record such Restrictions Modifications.

Dated \_\_\_\_\_.

\_\_\_\_\_(SEAL) \_\_\_\_\_(SEAL)  
 \* \_\_\_\_\_ \*

\_\_\_\_\_(SEAL) \_\_\_\_\_(SEAL)  
 \* \_\_\_\_\_ \*

**AUTHENTICATION**

Signature(s) \_\_\_\_\_

Authenticated on \_\_\_\_\_

\* \_\_\_\_\_

TITLE: MEMBER STATE BAR OF WISCONSIN  
 (If not, \_\_\_\_\_  
 Authorized by Wis. Stat. § 706.06)

THIS INSTRUMENT DRAFTED BY:  
Kenneth W. Vermeulen, Barnes & Thornburg LLP  
171 Monroe Ave. NW, Suite 1000, Grand Rapids, MI 49503

**ACKNOWLEDGEMENT**

STATE OF WISCONSIN )  
 )ss.  
 \_\_\_\_\_ COUNTY )

Personally came before me on \_\_\_\_\_,  
 the above-named \_\_\_\_\_

to me known to be the person(s) who executed the foregoing  
 instrument and acknowledged the same.

\* \_\_\_\_\_  
 Notary Public, State of Wisconsin  
 My Commission (is permanent) (expires: \_\_\_\_\_)

(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

WARRANTY DEED

© 2003 STATE BAR OF WISCONSIN

FORM NO. 1-2003

\*Type name below signatures.

## Addendum A

### Parcel 1

A tract or parcel of land, in Government Lot One (1) of Section Twenty-nine (29), Township Nineteen (19) North, Range Twenty-four (24) East, in the City of Manitowoc, Manitowoc County, Wisconsin, including within its boundaries Blocks Two Hundred Twenty-three (223) and Two Hundred Thirty-four (234) as said Blocks are laid down and shown upon the recorded Plat of the City of Manitowoc; and A part of Block Two Hundred Thirty-five (235), according to the recorded Plat of the City of Manitowoc;

Together with vacated streets or portions of vacated streets abutting the aforesaid Blocks; and part of the accretions to and lying easterly of said Blocks and vacated streets, which said tract or parcel of land is bounded and described as follows:

Beginning at an iron pipe located in the east line of Lake Street (n/k/a South 5th Street), in the City of Manitowoc, which is fifty-five and five-tenths (55.5) feet north, measured along said street line, from an iron pipe set at the point of intersection of said street line, with the southerly line of Quay Street (as it existed on May 23, 1942), as extended easterly across said Lake Street (n/k/a South 5th Street); running thence south from said point of beginning on and along said East line of Lake Street (n/k/a South 5th Street), a distance of four hundred one and one-tenth (401.1) feet to an angle in said street line; thence southwesterly along the southeasterly line of said Lake Street (n/k/a South 5th Street) a distance of four hundred forty-two and five-tenths (442.5) feet to an iron pipe; thence southeasterly along a line making an angle of twenty-one degrees, thirty-six minutes ( $21^{\circ} 36'$ ) to the left, with an extension of the last described course, a distance of seventy-two and four-tenths (72.4) feet to an iron pipe; thence southeasterly along a line making an angle of sixty-eight degrees, forty-two minutes ( $68^{\circ} 42'$ ) to the left, with an extension of the last described course, a distance of three hundred sixty-two and ninety-five one-hundredths (362.95) feet to an iron pipe; thence northeasterly along a line making an angle of seventy-four degrees, two minutes ( $74^{\circ} 2'$ ) to the left, with an extension of the last described course, a distance of one hundred eighteen and ninety-four one-hundredths (118.94) feet to a point which is distant seventy-five (75) feet southeasterly, measured at right angles, from the southeasterly face of the dock along the northwesterly side of the coal dock slip; thence northeasterly along a line making an angle of fifteen degrees, fifty-six minutes ( $15^{\circ} 56'$ ) to the left, with an extension of the last described course, and on and along a line which is parallel with and distant seventy-five (75) feet southeasterly, measured at right angles, from said southeasterly face of the dock along the northwesterly side of said coal dock slip, a distance of four hundred ten and sixty-five one-hundredths (410.65) feet; thence northwesterly, at right angles, ten (10) feet; thence northeasterly, at right angles, and on and along a line parallel with and distant sixty-five (65) feet southeasterly, from the southeasterly face of the dock along the northwesterly side of said ferry and coal dock slips, a distance of four hundred fifty and five-tenths (450.5) feet; thence northwesterly, at right angles, sixty-five (65) feet to the point of an angle in the southeasterly face of said dock; thence northwesterly along a line making an angle to the left of six degrees, thirty-eight minutes ( $6^{\circ} 38'$ ), with an extension of the last described course, a distance of three hundred forty-five and seventeen one-hundredths (345.17) feet to an iron pipe, thence southwesterly on a line making an angle to the left of twelve degrees, fifty-nine minutes ( $12^{\circ} 59'$ ) with an extension of the last described course a distance of one hundred eight and six-tenths (108.6) feet to the iron pipe at the point of beginning.

Excepting therefrom the following portions conveyed to the City of Manitowoc:

- 1) Portion conveyed by Warranty Deed recorded in Volume 2046 of Records, Page 729, as Document No. 980641.

2) Portion conveyed by Warranty Deed recorded in Volume 2377 of Records, Page 135, as Document No. 1047439.

3) Portion conveyed by Warranty Deed recorded in Volume 2377 of Records, Page 141, as Document No. 1047440.

Tax ID No. 052-000-235-010.00

Parcel 2

A perpetual non-exclusive easement for the purpose of storage and handling of coal over: A tract of land located in Government Lot One (1) of Section Twenty-nine (29), Township Nineteen (19) North, Range Twenty-four (24) East, and accretions to and lying easterly of Blocks 223, 234 and 235 of the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin, being more particularly described as follows:

Commencing at the Southwest corner of Block 222 of the Original Plat of the City of Manitowoc, thence S.  $00^{\circ} 12' 12''$  W. (recorded as S.  $01^{\circ} 12' 35''$  E.) 24.55 feet, thence N.  $84^{\circ} 58' 15''$  E. (recorded as N.  $83^{\circ} 35' 02''$  E.) 108.60 feet, thence S.  $82^{\circ} 02' 32''$  E. (recorded as S.  $83^{\circ} 25' 58''$  E.) 345.17 feet, the point of real beginning; thence S.  $80^{\circ} 59' 45''$  E., 44.93 feet, thence S.  $13^{\circ} 56' 15''$  W, 844.62 feet; thence S.  $16^{\circ} 41' 48''$  E., 45.37 feet, thence S.  $29^{\circ} 47' 15''$  W, 15.73 feet, thence N.  $76^{\circ} 10' 45''$  W., 63.58 feet; thence N.  $13^{\circ} 56' 15''$  E., 895.04 feet to the true point of real beginning.

Tax ID No. 052-000-222-011.00