

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re:

Timothy P. Brennan,

Case No. 17-12337

(Chapter 11)

Debtor.

**DEBTOR'S MOTION TO SELL ASSETS FREE AND CLEAR
OF LIENS, CLAIMS AND ENCUMBRANCES**

Timothy P. Brennan, the debtor in this case (the "Debtor"), by his attorneys, hereby moves the Court pursuant to 11 U.S.C. § 363(b) and (f) and Federal Rule of Bankruptcy Procedure 6004, for authority to sell certain real and personal property free and clear of liens, claims and encumbrances. In support of this Motion, the Debtor states as follows:

1. On June 30, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Code"). The Debtor remains in possession of his estate.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and the general order of reference in this district.

3. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(1)(A) and (N).

4. The Debtor's estate consists primarily of the following assets:

- (a) Real property located at 1115 Industrial Drive in West Salem, Wisconsin (the "West Salem Property");
- (b) Four overhead cranes (including crane rails), 17 jib cranes with hoists, two rotary screw compressors, and some miscellaneous other equipment (the "Equipment");
- (c) A promissory note issued by La Crosse Technology Consultants, Inc. in the amount of \$810,750, payable with interest in 96 equal monthly installments of \$11,671.24 each beginning in October, 2018; and

- (d) The Debtor's homestead property located at 455 Country Club Lane in Onalaska, Wisconsin.

5. The West Salem Property and the Equipment are encumbered by and subject to the following lien claims:

- (a) Approximately \$200,000 for real estate taxes (including penalties and interest) due for the years 2015, 2016 and 2017;
- (b) An estimated \$2.9 to \$3.0 million owed to Associated Bank under a first-priority mortgage and security interest; and
- (c) Two junior mortgages held by La Crosse County Economic Development Fund and Mississippi River Regional Planning Commission in the combined aggregate amount of approximately \$240,000.

6. The Debtor has received an offer from Gundersen Lutheran Administrative Services, Inc. ("Gundersen") to purchase the West Salem Property for \$3.2 million. A copy of that offer and the Debtor's counteroffer as accepted by Gundersen is attached as Exhibit A (together, the "Purchase Offer").

7. The Purchase Offer includes contingencies for standard due diligence and approval by Gundersen's finance committee. Closing is also conditioned on this Court entering an order approving the sale.

8. Assuming the sale to Gundersen is approved by the Court within about 28 days of this Motion, the parties anticipate a closing no later than March 31, 2018.

9. Pursuant to the Purchase Offer, the Debtor may continue to market the West Salem Property until Gundersen waives all contingencies. However, any other offer that the Debtor receives to purchase the West Salem Property will be considered a secondary offer, and the offering party will be required to match or exceed all relevant terms of the Purchase Offer, including with respect to the time of closing.

10. The price in the Purchase Offer exceeds the value of the West Salem Property that has been accepted by the Court for purposes of determining adequate protection to Associated

Bank. After payment of a 4% broker's commission, the net proceeds available for satisfaction of secured claims will be about \$3,062,000.

11. In addition, the Debtor proposes to sell the Equipment via an auction conducted by Branford Auctions, LLC ("Branford"). The terms of that auction are set forth in the Auction Services Agreement attached as Exhibit B. Contemporaneously with the filing of this Motion, the Debtor has filed an application to employ Branford under § 328(a) of the Code.

12. The Debtor expects at least \$200,000 of net proceeds from the Equipment auction will be available for application to secured claims.

13. Thus, the Debtor anticipates that the combined proceeds from selling the West Salem Property to Gundersen and the Equipment auction (the "Sale Proceeds") will be sufficient to fully pay the accrued real estate taxes and the secured claim of Associated Bank, and to provide a partial payment to the holders of junior mortgages.

14. Prior to the hearing on this Motion, the Debtor will file a plan of reorganization (the "Plan") that provides for the ultimate distribution of the Sale Proceeds. Until confirmation of the Plan, or an earlier order of the Court, the Sale Proceeds will be held by the Debtor in his debtor-in-possession account, with all liens attaching thereto.

WHEREFORE, the Debtor moves the Court for an order authorizing him to sell the West Salem Property and the Equipment on the terms described in this Motion and its exhibits, free and clear of liens, claims and encumbrances pursuant to § 363(b) of the Code, with all liens to attach to the Sale Proceeds.

Dated this 18th day of January, 2018.

Levenson Lucey & Metz S.C.
3030 W. Highland Blvd.
Milwaukee, WI 53208
414-271-8502
mlm@levmetz.com

Mark L. Metz
Mark L. Metz, Attorney for
Timothy P. Brennan, Debtor

Approved by the Wisconsin Real Estate Examining Board
03-1-12 (Optional Use Date) 07-1-12 (Mandatory Use Date)

Godfrey & Kahn
WISCONSIN REALTORS® ASSOCIATION
4801 Forest Run Road
Madison, Wisconsin 53704
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WB-15 COMMERCIAL OFFER TO PURCHASE

1 **LICENSEE DRAFTING THIS OFFER ON** January 4, 2018 **[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, Gundersen Lutheran Administrative Services, Inc. and/or its assigns
4 _____, offers to purchase the Property known as [Street Address] 1115 Industrial Drive
5 _____ in the _____ Village
6 of West Salem _____, County of La Crosse _____, 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:** Three Million, Two Hundred Thousand
9 _____ Dollars (\$ 3,200,000.00).
10 ■ **EARNEST MONEY** of \$ _____ accompanies this Offer and earnest money of \$ 50,000.00 will be
11 mailed, or commercially or personally delivered within five (5) business days of acceptance to listing broker or
12 a title company reasonably acceptable to Buyer (the "Title Company").
13 ■ **THE BALANCE OF PURCHASE PRICE** will be paid in cash or equivalent at closing unless otherwise provided below.
14 ■ **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price the Property, all Fixtures on the Property on the date of this Offer
15 not excluded at lines 20-22, and the following additional items: none others
16 _____
17 _____
18 All personal property included in purchase price will be transferred by bill of sale or _____
19 _____
20 ■ **NOT INCLUDED IN PURCHASE PRICE:** Seller's personal property. Seller shall repair any damage caused to
21 the Property by removal of Seller's personal property and equipment (or any tenant's personal
22 property and equipment) by the date which is 10 days prior to Closing, as defined in the Rider.
23 **CAUTION:** Identify trade fixtures owned by tenant, if applicable, and Fixtures that are on the Property (see lines 303-310) to be excluded
24 by Seller or which are rented and will continue to be owned by the lessor.
25 **NOTE:** The terms of this Offer, not the listing contract or marketing materials, determine what items are included/excluded.
26 **ACCEPTANCE** Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.
27 **CAUTION:** Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines running from
28 acceptance provide adequate time for both binding acceptance and performance.
29 **BINDING ACCEPTANCE** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before
30 01/08/2018 at 5PM _____ . Seller may keep the Property on the market and accept
31 secondary offers after binding acceptance of this Offer.
32 **CAUTION:** This Offer may be withdrawn prior to delivery of the accepted Offer.
33 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (☐) ARE PART OF THIS OFFER ONLY IF
34 THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A" OR ARE LEFT BLANK.
35 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices to a
36 Party shall be effective only when accomplished by one of the methods specified at lines 37-54.
37 (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.
38 Seller's recipient for delivery (optional): Bob Gintoft
39 Buyer's recipient for delivery (optional): Dan J. Lilly; cc: Luis Delgado, Amy Steiger, & Danny Tang
40 ☐ (2) **Fax:** fax transmission of the document or written notice to the following telephone number:
41 Seller: (_____) Buyer: (_____)
42 ☐ (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery
43 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
44 line 47 or 48.
45 ☐ (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
46 recipient for delivery if named at line 38 or 39, for delivery to the Party's delivery address at line 47 or 48.
47 Delivery address for Seller: _____
48 Delivery address for Buyer: _____
49 ☒ (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
50 consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or household purposes,
51 each consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and
52 electronic signatures in the transaction, as required by federal law.
53 E-Mail address for Seller (optional): robertg@ogdenre.com
54 E-Mail address for Buyer (optional): djlilly@gundersenhealth.org; cc: See Lines 109-110
55 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery
56 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 181-215) other than those identified in Seller's disclosure report dated _____
59 and Real Estate Condition Report, if applicable, dated November 30, 2017, 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 See Rider
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 others.
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 See Rider

96 _____ Insert additional terms, if any, at lines 100-115 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

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** (1) All email notices to Buyer shall also be delivered to
110 ltdelgad@gundersenhealth.org, amy@onlinecastles.com and dtang@gklaw.com.
111 _____
112 _____
113 _____
114 _____
115 _____

Property Address: 1115 Industrial Dr, West Salem, WI 54669

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☐ **PROPOSED USE CONTINGENCIES:** Buyer is purchasing the Property for the purpose of: _____

_____ [insert proposed use and type and size of building, if applicable; e.g. restaurant/tavern with capacity of 350 and 3 second floor dwelling units]. The optional provisions checked on lines 123-139 shall be deemed satisfied unless Buyer delivers to Seller by the deadline(s) set forth on lines 123-139 written notice specifying those items which cannot be satisfied and written evidence substantiating why each specific item included in Buyer's notice cannot be satisfied. Upon delivery of Buyer's notice, this Offer shall be null and void. Seller agrees to cooperate with Buyer as necessary to satisfy the contingencies checked at lines 123-139.

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

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

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

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

☐ **LAND USE APPROVAL:** This Offer is contingent upon Buyer obtaining, at (Buyer's) (Seller's) ☐ ("Buyer's" if neither is stricken) expense, a ☐ rezoning; ☐ conditional use permit; ☐ license; ☐ variance; ☐ building permit; ☐ occupancy permit; ☐ other _____ ☐ **CHECK ALL THAT APPLY**, for the Property for its proposed use described

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 significantly increase the cost of Buyer's proposed use, all within _____ days of acceptance.

☐ **MAP OF THE PROPERTY:** This Offer is contingent upon (Buyer obtaining) (Seller providing) ☐ ("Seller providing" if neither is stricken) a _____ survey (ALTA/ACSM Land Title Survey if survey type is not specified) dated subsequent to the date of acceptance of this Offer and prepared by a registered land surveyor, within _____ days of acceptance, at (Buyer's) (Seller's) ☐ ("Seller's" if neither is stricken) expense. The map shall show minimum of _____ acres, maximum of _____ acres, the legal description of the Property, the Property's boundaries and dimensions, visible encroachments upon the Property, the location of improvements, if any, and: _____

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

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

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 delivery of said map, delivers to Seller a copy of the map and a written notice which identifies: (1) a significant encroachment; (2) information materially inconsistent with prior representations; (3) failure to meet requirements stated within this contingency; or (4) the existence of conditions 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 void.

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

- ☐ Documents evidencing that the sale of the Property has been properly authorized, if Seller is a business entity.
- ☐ A complete inventory of all furniture, fixtures, equipment and other personal property included in this transaction which is consistent with representations made prior to and in this Offer.
- ☐ Uniform Commercial Code lien search as to the personal property included in the purchase price, showing the Property to be free and clear of all liens, other than liens to be released prior to or at closing.
- ☐ Rent roll.
- ☐ Other _____

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

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

☐ **CONTINGENCY SATISFACTION:** This contingency shall be deemed satisfied unless Buyer, within _____ days of the earlier of 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)**

Property Address: 1115 Industrial Dr, West Salem, WI 54669

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

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

CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 238 or 239.

☐ **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____ %.

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

If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 109-115 or 277-286 or in an addendum attached per line 479.

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

■ **BUYER'S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line 229. Buyer and Seller agree that delivery of a copy of any written loan commitment to Seller (even if subject to conditions) shall satisfy Buyer's financing contingency if, after review of the loan commitment, Buyer has directed, in writing, delivery of the loan commitment. Buyer's written direction shall accompany the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability.

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

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

■ **FINANCING UNAVAILABILITY:** If financing is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability. Unless a specific loan source is named in this Offer, Seller shall then have 10 days 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 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 authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit worthiness for Seller financing.

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

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

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

ADDITIONAL PROVISIONS/CONTINGENCIES (1) Special assessments, if any, levied or for work actually commenced prior to the date of closing shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer.

287 **DEFINITIONS CONTINUED FROM PAGE 4**

288 ■ **ENVIRONMENTAL SITE ASSESSMENT:** An "Environmental Site Assessment" (also known as a "Phase I Site Assessment") (see lines 379-395)
289 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
290 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
291 recent aerial photographs of the Property, if available; (4) a review of environmental licenses, permits or orders issued with respect to the Property
292 (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
293 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
294 including the National Priorities List, the Department of Nature Resources' (DNR) Registry of Waste Disposal Sites, the DNR's Contaminated
295 Lands Environmental Action Network, and the DNR's Remediation and Redevelopment (RR) Sites Map including the Geographical Information
296 System (GIS) Registry and related resources. Any Environmental Site Assessment performed under this Offer shall comply with generally
297 recognized industry standards (e.g. current American Society of Testing and Materials "Standard Practice for Environmental Site Assessments"),
298 and state and federal guidelines, as applicable.

299 **CAUTION: Unless otherwise agreed an Environmental Site Assessment does not include subsurface testing of the soil or groundwater**
300 **or other testing of the Property for environmental pollution. If further investigation is required, insert provisions for a Phase II Site**
301 **Assessment (collection and analysis of samples), Phase III Environmental Site Assessment (evaluation of remediation alternatives) or**
302 **other site evaluation at lines 109-115 or 277-286 or attach as an addendum per line 479.**

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

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

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

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

318 **EARNEST MONEY**

319 ■ **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
320 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.

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

323 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from
324 payor'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
325 disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written
326 disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to broker within 60 days after
327 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
328 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;
329 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
330 action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to
331 disbursement.

332 ■ **LEGAL RIGHTS/ACTION:** Broker's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer.
333 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
334 shall send Buyer and Seller notice of the disbursement by certified mail. If Buyer or Seller disagree with broker's proposed disbursement, a lawsuit
335 may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the
336 sale of residential property with 1-4 dwelling units and certain other earnest money disputes. Buyer and Seller should consider consulting
337 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
338 faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations
339 concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

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TITLE EVIDENCE

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

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

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

■ **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 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. Buyer shall pay all costs of providing title evidence required by Buyer's lender.

■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's) (Buyer's) ~~STRIKE ONE~~ ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy exclusions and exceptions, provided the title company will issue the endorsement. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 365-371).

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

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

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

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

☐ **ENVIRONMENTAL EVALUATION CONTINGENCY:** This Offer is contingent upon a qualified independent environmental consultant of Buyer's choice conducting an Environmental Site Assessment of the Property (see lines 288-302), at (Buyer's) (Seller's) expense ~~STRIKE ONE~~ ("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 include a material violation of environmental laws, a material contingent liability affecting the Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous substances either on the Property or presenting a significant risk of contaminating the Property due to future migration from other properties. Defects do not include conditions the nature and extent of which Buyer had actual knowledge or written notice before signing the Offer.

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

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

■ **RIGHT TO CURE:** Seller (shall) (shall not) ~~STRIKE ONE~~ ("shall" if neither is stricken) have a right to cure the Defects. If Seller has the right to 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 Seller's election to cure Defects, (2) curing the Defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the work done 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 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 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, as its sole remedy,

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.~~

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450 ☐ **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 437-449). 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 223-225) 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 _____ **Rider** _____ is/are made part of this Offer.

480 This Offer was drafted by [Licensee and Firm] _____ **Danny S. Tang, Godfrey & Kahn, S.C.**

481 _____ on **01/04/2018**

482 Buyer Entity Name (if any): _____ **See Rider for Signatures**

483 (X) *William J. Will* *SVP* *5 Jan 2018*
484 Buyer's/Authorized Signature ▲ Print Name/Title Here ► 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): _____

493 (X) _____
494 Seller's/Authorized Signature ▲ Print Name/Title Here ► 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 ▲

RIDER

The terms and conditions of this RIDER shall be deemed to be incorporated into and part of the attached WB-15 Commercial Offer to Purchase (the "Preprinted Offer," and together with this Rider, the "Offer") between GUNDERSEN LUTHERAN ADMINISTRATIVE SERVICES, INC., a Wisconsin nonstock corporation, and/or its assigns ("Buyer") and TIMOTHY P. BRENNAN, a Wisconsin resident ("Seller"), for the Property, as such term is defined in Section 1, below. In the event of any conflicts or inconsistencies between the Preprinted Offer and this Rider, the terms of this Rider shall control. Terms not otherwise defined in this Rider shall have the meaning given to such term in the Preprinted Offer.

1. Property. The term "Property" means the real property commonly known as 1115 Industrial Drive, West Salem, Wisconsin (Tax Parcel No. 16-1047-21).

2. Acceptance Date. The term "Acceptance Date," as used in this Offer, shall mean the date on which the party making the last offer or counter offer receives an executed copy of the other party's acceptance of such offer or counter offer.

3. Seller's Status. Buyer acknowledges that (i) Seller is operating as debtor-in-possession under Chapter 11 of the United States Bankruptcy Code (the "Code") in Case NO. 17-12337-bhl (the "Bankruptcy"), pending in the United States Bankruptcy Court for the Western District of Wisconsin (the "Court"), and (ii) Associated Bank, National Association has initiated foreclosure proceedings in the La Crosse County Circuit Court as Case No. 2017CV000345 (the "Foreclosure").

4. Court Approval Required. The sale of the Property is subject to approval by the Court, as provided in the Code. Seller shall, at its sole cost and expense and within forty-five (45) days after the Acceptance Date, obtain approval of this Offer and the sale of the Property free and clear of all liens and encumbrances by order of the Court (the "Court Order"). In the event Seller is not able to obtain the Court Order within such forty-five (45) day period, this Offer shall be null and void and of no further force and effect and all Earnest Money shall be returned to Buyer. In the event Seller obtains the Court Order, Seller shall give Buyer notice the entry of the Court Order no later than the business day following the Court's decision on such approval (the "Approval Notice").

5. Title & Survey. Buyer may, at Buyer's cost, obtain a commitment for the issuance of an ALTA owner's coverage policy of title insurance (the "Title Commitment"), together with legible copies of underlying title exception documents, from the Title Company. Buyer may, at its election and at its sole cost and expense, obtain a survey of the Property (the "Survey"). Buyer will have fifty (50) days after Buyer's receipt of the Approval Notice to deliver written objections to the Title Commitment and the Survey to Seller (the "Objections"). Seller agrees to deliver written notice to Buyer within five (5) days after Seller receives Buyer's written Objections, electing whether or not to attempt to cure Buyer's Objections. If Seller elects to cure Buyer's Objections, Seller shall have until the date which is ten (10) days prior to Closing (as that term is defined below) to cure the same to Buyer's satisfaction (the "Cure Period"). If Seller elects not to cure Buyer's Objections, or if Seller does not cure Buyer's Objections prior to the

expiration of the Cure Period, then Buyer shall have the option to either (i) terminate this Offer by written notice to Seller delivered at any time prior to the Closing; or (ii) close on the purchase of the Property, in which case Buyer shall be deemed to have accepted any uncured title Objections and waived any rights against Seller with respect thereto. If Buyer terminates this Offer under (i), above, Seller shall return the Earnest Money to Buyer and this Offer shall be null and void. At Closing, Seller will deliver and Buyer will accept title to the Property subject only to any matters of record to which Buyer does not object or is otherwise deemed to accept as set forth in this Section (collectively, the "Permitted Exceptions"). Notwithstanding anything to the contrary set forth in the Offer, (i) the Property shall be conveyed to Buyer free and clear of all liens and encumbrances, and (ii) Seller shall execute any and all documents as may be required by the Title Company remove the standard title exceptions shown in the Title Commitment and to provide a gap endorsement at Closing. At Closing, Buyer shall pay the premium for an ALTA owner's coverage policy of title insurance.

6. Buyer's Contingencies. Buyer's obligation to conclude this transaction and purchase the Property shall be contingent upon Buyer satisfying or waiving the following contingencies, each to the satisfaction of Buyer in Buyer's sole discretion:

6.1 Feasibility. Within seven (7) days after the Acceptance Date, Seller shall deliver to Buyer any surveys and maps of the Property, environmental assessments, studies or analyses, soil reports and testing results, appraisals and prior title policies, commitments and searches, together with any copies of underlying title exception documents, in the Seller's possession (the "Seller's Deliverables"). Buyer, at its sole cost and expense, shall have the right to perform any and all inspections, reviews, investigations, and testing of the Property as Buyer deems necessary or desirable including, but not limited to, a physical inspection of all buildings and related improvements located on the Property, a Phase I assessment of the Property, and Phase II sampling of the Property. Buyer shall have a period of time commencing on the Acceptance Date and terminating fifty (50) days after Buyer's receipt of the Approval Notice (the "Due Diligence Period") to review the Seller's Deliverables, perform inspections and investigations of the Property, and apply for all third-party permits and approvals deemed reasonably necessary for Buyer's intended use of the Property. In the event Buyer deems, in its sole discretion, that the purchase of the Property is not feasible for any reason, Buyer shall have the right to terminate the Offer by giving written notice to Seller prior to the expiration of the Due Diligence Period, which shall render the Offer null and void and of no further force or effect and all Earnest Money shall be returned to Buyer.

6.2 Finance Committee Approval. Buyer's obligation to close on the purchase of the Property shall be contingent upon Buyer obtaining approval by its Finance Committee, such approval to have been obtained prior to the expiration of the Due Diligence Period. In the event Buyer is unable to obtain the requisite approval from Buyer's Finance Committee prior to the expiration of the Due Diligence Period, Buyer shall have the right to terminate the Offer by giving written notice to Seller prior to the expiration of the Due Diligence Period, which shall render

the Offer null and void and of no further force or effect and all Earnest Money shall be returned to Buyer.

6.3 Termination of Leases; Vacation by Tenants. Buyer's obligation to close on the purchase of the Property shall be contingent upon Seller, at its sole cost and expense, causing (i) the termination of any and all leases affecting the Property and providing written evidence satisfactory to Buyer of the same by the date which is ten (10) days prior to the Closing, and (i) any and all tenants under such leases to vacate the Property by the date which is ten (10) days prior to the Closing. In the event (i) and (ii) are not satisfied by the date which is ten (10) days prior to the Closing, Buyer shall have the right to terminate the Offer by giving written notice to Seller prior to Closing, which shall render the Offer null and void and of no further force or effect and all Earnest Money shall be returned to Buyer.

7. Seller's Obligations. Seller will join in executing any and all applications or requests for permits, approvals and/or licenses necessary or required for Buyer's intended use of the Property, to the extent that Seller's signature is necessary. Seller shall allow Buyer and Buyer's employees, agents, and consultants access to and across the Property at all reasonable times for the purposes of performing Buyer's due diligence and confirming that Seller has completed the obligations of Seller set forth in this Offer.

8. Operation of Property. From the Acceptance Date to the Closing Date, Seller shall:

8.1 Keep and preserve the Property in the condition existing as of the date of this Offer and not deposit or permit to be deposited thereon any garbage, fill or other refuse material without the Buyer's prior written consent.

8.2 Not, without first obtaining the written approval from Buyer, which may be granted or withheld in Buyer's sole discretion, enter into any lease or other agreement with respect to the Property which will extend in force beyond the Closing Date and purport to bind Buyer or the Property or will not be fully performed by Seller prior to the Closing Date.

9. Closing. The closing of this transaction (the "Closing") shall occur at the office of the Title Company or at such other location as may be designated by Buyer on or before the date which is fifteen (15) days after the expiration of the Due Diligence Period (the "Closing Date"). At the Closing, the Seller will convey the Property to Buyer by quit claim deed, subject only to the Court Order.

10. Closing Costs. At Closing, Seller shall be responsible for (i) the Wisconsin real estate transfer fee, (ii) Seller's attorneys' fees, and (iii) all deferred and other special assessments for which Seller is responsible hereunder. Buyer shall be responsible for (i) recording the general warranty deed, (ii) the premium for the owner's policy of title insurance, the premium for any lender's policy of title insurance and the cost of any extended coverage or endorsements to either

the owner's or lender's policies, (iii) the Closing and escrow fees charged by the Title Company, (iv) the fees to record the deed and any mortgage or other financing documents, (v) the Survey, if applicable, and (vi) Buyer's attorneys' fees.

11. Brokers; Commission. Each party represents and warrants to the other that no person or entity acting as real estate broker, finder or real estate agent brought about this Offer other than Robert Gintoft of Ogden & Company, Inc., as Seller's agent ("Seller Broker"), and Amy Steiger of Castle Realty, LLC, as Buyer's agent ("Buyer Broker"). Seller agrees to pay Seller Broker's brokerage fees pursuant to the terms of a separate brokerage agreement. Buyer agrees to pay Buyer Broker's brokerage fees pursuant to the terms of a separate brokerage agreement.

12. Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows, which representations and warranties shall survive the Closing:

12.1 There are no existing, pending or threatened condemnation proceedings affecting any portion of the Property.

12.2 The Property has never been used as a landfill, dump or industrial waste disposal area; the Property is in compliance with all federal, state and local (including local sewerage district) laws, rules, regulations, ordinances, codes and orders governing, establishing, limiting or otherwise affecting the discharge or disposal of air pollutants, water pollutants, processed waste water or solid, hazardous or toxic wastes; there are no pending or threatened actions or proceedings against Seller or the Property with regard to the foregoing by the local municipality, the local sewerage district, the Wisconsin Department of Natural Resources, the U.S. Environmental Protection Agency or any other governmental entity and there is no basis for any such action or proceeding; no solid, toxic or hazardous wastes have been disposed of or stored on the Property during any time that Seller owned the Property, and any such wastes have been hauled from the Property. Seller has no notice or knowledge of any solid, toxic or hazardous wastes having ever been disposed of or stored on the Property; and there is no urea formaldehyde insulation or asbestos.

12.3 Under penalty of perjury, Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1954, as amended, and Seller will deliver to Buyer on or before Closing Seller's taxpayer identification number in the form of a FIRPTA Certificate.

12.4 Other than the Bankruptcy and the Foreclosure, there is no action, suit, proceeding or claim affecting the Property or any portion thereof, or affecting Seller or the ownership, operation, use or occupancy of the Property pending or being prosecuted before or by any governmental authority nor is any such action, suit, proceeding or claim threatened or being asserted.

12.5 Intentionally Deleted.

12.6 The Property is free and clear of all mechanic's liens, liens, mortgages, or encumbrances of any nature except as expressly permitted in this Offer, and no work has been performed or is in progress by Seller, and no materials have been furnished to the Property or the improvements or any portion thereof, which might give rise to mechanics', materialmen's or other liens against the Property or the improvements or any portion thereof.

12.7 This Offer constitutes the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms.

12.8 No materials have been delivered nor any work or labor performed on the Property under contracts with Seller during the last ninety (90) days which have not been fully paid for, and no person or entity presently has any lien, or right of lien, against the Property for labor or materials; and Seller will indemnify Buyer for all amounts that the latter may be compelled to pay in discharge or settling any mechanics lien filed for record against the Property and relating to such labor and/or materials.

12.9 No part of the Property contains, is located within, or abuts a flood plain, wetland, or marshland, which is subject to state, federal or municipal regulations, control or protection.

12.10 The Property is not subject to any rights of first refusal or purchase options by any other party.

12.11 Seller has not received notice of violation of zoning ordinances or of any health, safety, pollution, environmental, or other laws, ordinances, rules or regulations with respect to the Property, which have not been heretofore entirely corrected to the satisfaction of the appropriate governmental authorities.

13. Binding Contract. Seller and Buyer hereby acknowledge and agree that they intend this Offer to be a binding and enforceable agreement, subject to the terms and conditions set forth herein, and each party hereby waives any right to hereafter challenge the enforceability of this Offer on the basis that the contingencies set forth in Section 6 hereof are at the good faith discretion of Buyer. Seller acknowledges and agrees that the efforts by Buyer to satisfy contingencies will require Buyer to expend significant time and money investigating the Property and attempting to satisfy all of the contingencies precedent to the purchase of the Property and the expenditure of such time and money by Buyer, constitutes good and sufficient consideration to Seller for Seller accepting this Offer to Purchase and agreeing to be bound hereto.

14. Miscellaneous.

14.1 Successors/Assigns. All of the terms, covenants and conditions of this Offer shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

14.2 Headings. The captions and section numbers appearing in this Offer are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Offer, nor in any way affect this Offer.

14.3 Further Actions. On the Closing Date, or thereafter if necessary, each party hereto shall, without cost or expense to the other party, execute and deliver to or cause to be executed and delivered to the other party, such further instruments of transfer and conveyance as may be reasonably requested, and take such other action as a party may reasonably require to carry out more effectively the transactions contemplated herein.

14.4 Counterparts. This Offer may be executed in counterparts and facsimile copies of a signed Offer shall be binding on the party whose signature appears on the facsimile.

14.5 Assignment. Buyer shall have the right at any time to assign its rights under this Offer to an affiliated third party, which shall assume the obligations hereunder for the benefit of Seller. Any such assignment shall release Buyer of any obligations or liability arising under this Offer.

[Signatures on Following Page.]

IN WITNESS WHEREOF, Buyer and Seller have caused this Offer to be executed as of the date accepted by Seller, below.

BUYER:

GUNDERSEN LUTHERAN ADMINISTRATIVE
SERVICES, INC.

By: William Farrell
William Farrell, Senior Vice President

Date: 4 Jan 2018

SELLER:

Timothy P. Brennan

Date of Acceptance: _____

18263710.4

SELLER'S COUNTER-OFFER DATED JANUARY 15, 2018

The undersigned seller ("Seller") hereby presents this Counter-Offer to the Commercial Offer to Purchase (the "Offer") submitted by Gundersen Lutheran Administrative Services, Inc. ("Buyer") on January 5, 2018. All terms and conditions remain the same as stated in the Offer except the following:

1. **No Exclusivity.** The language stricken from Lines 30-31 of the Offer is restored.
2. **Seller's Recipient.** Mark L. Metz is added to Line 38, and mlm@levmetz.com is added to Line 53.
3. **Court Approval.** The period for Court approval in Section 4 of the Rider shall be 35 days rather than 45 days.
4. **Title & Survey.** The period in Section 5 of the Rider for Buyer to deliver any written objections to the Title Commitment shall be 35 days rather than 50 days.
5. **Due Diligence Period.** The Due Diligence Period as defined in Section 6.1 of the Rider shall be 35 days after Buyer's receipt of the Approval Notice rather than 50 days.
6. **Closing.** The Closing as defined in Section 9 of the Rider shall occur on or before (a) the date 7 days after expiration of the Due Diligence Period, or (b) March 31, 2018, whichever is later, unless extended by agreement of the parties.
7. **Acceptance.** This Counter-Offer will expire and be of no effect unless accepted by Buyer in writing prior to 5:00 p.m. on ~~January 16~~, 2018.

Jan 17 *WFTB*

Counter-Offer made this 15th day of January, 2018.

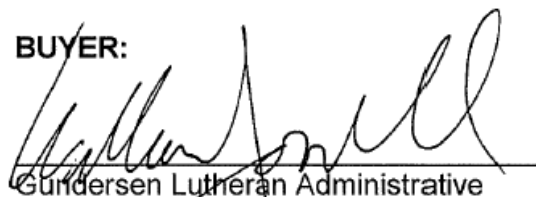
SELLER:



Timothy P. Brennan

Counter-Offer accepted this 17 day of January, 2018.

BUYER:



Gundersen Lutheran Administrative
Services, Inc., by its authorized agent
William Farrell, Sr. Vice President

AUCTION SERVICES AGREEMENT

This AUCTION SERVICES AGREEMENT (this "Agreement") is made this 18th day of January 2018 by and between Timothy P. Brennan ("Seller") and Branford Auctions, LLC, a Connecticut Limited Liability Company with offices at 896 Main Street, Branford, Connecticut 06405 ("Auctioneer").

WITNESSETH

WHEREAS, Seller is the owner of the machinery, equipment, attachments and other personal property listed in Schedule A, attached hereto and made a part hereof (collectively referred to as the "Equipment"), and

WHEREAS, Seller desires to sell the Equipment, and

WHEREAS, Auctioneer desires to assist Seller in the sale of the Equipment by conducting, on behalf of Seller, a public auction sale;

NOW THEREFORE, in consideration of the mutual promises and other terms and conditions hereinafter set forth, the parties agree as follows:

TERMS AND CONDITIONS

SECTION 1. ENGAGEMENT AND TERM

- 1.1 Subject to Section 1.2 below, Seller hereby engages Auctioneer for the purpose of conducting a public auction sale of the Equipment (the "Auction") on or around February 20, 2018. Thereafter, Auctioneer agrees to vacate the Premises (as hereinafter defined) on a date to be agreed upon, but by no later than March 15, 2018 (the "Termination Date").
- 1.2 Seller is currently operating as a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code (the "Code") in Case No. 17-12337-bhl, pending in the United States Bankruptcy Court for the Western District of Wisconsin (the "Court"). This Agreement will not be effective between until it has been approved by the Court. Promptly upon execution of this Agreement, Seller shall seek such Court approval and authority to sell the Equipment free and clear of liens pursuant to section 363(b) of the Code.

SECTION 2. REPRESENTATIONS AND WARRANTIES

- 2.1 The Auction of the Equipment to buyers shall be only on an "as is" and "where is" basis, without guarantee, or warranty either expressed or implied including warranties of merchantability and fitness for a particular purpose.
- 2.2 Seller hereby represents and warrants to Auctioneer that upon obtaining Court approval as provided in Section 1.2, Seller shall have the right to sell the Equipment free and clear of all liens, claims and encumbrances pursuant to section 363(b) of the Code, and Seller will have complied with all legal requirements antecedent or necessary to the legal disposal and sale of the Equipment.
- 2.3 Seller hereby agrees to protect, defend, indemnify, and hold Auctioneer free and harmless from and against any and all claims arising from the breach of any of the representations or warranties contained herein.

SECTION 3. LOCATION AND DELIVERY

- 3.1 The Equipment is located at 1115 Industrial Drive, West Salem, WI 54669 (the "Premises"). Seller hereby represents that it owns the Premises and has the right to occupy and conduct a public auction thereon, and to grant Auctioneer access thereto. Seller hereby agrees to grant Auctioneer, its employees, agents, and invitees immediate access to the Premises from the date hereof through the Termination Date without cost to Auctioneer, for the purpose of preparing for and conducting the Auction, for periodic inspection, and for removing the Equipment after the Auction.
- 3.2 Auctioneer may, in its discretion, choose to: (i) offer the Equipment for sale by the piece or by the lot, (ii) offer some or all of the Equipment for sale on The Branford Group's website at *www.TheBranfordGroup.com* (the "Website"), and/or (iii) include other assets in the Auction in order to increase public attendance at the Auction. In Auctioneer's discretion, the Auction will either be (i) broadcast live over the Website as a "Webcast" auction, (ii) held onsite exclusively, or (iii) conducted exclusively over the Internet on the Website and advertised as an "On-Line Auction".
- 3.3 During the term of this Agreement, Seller shall not offer either publicly or privately any of the Equipment or any other item located on the Premises for sale other than by and through the Auctioneer. Seller may not withdraw, sell or otherwise dispose of any of the Equipment except at the Auction or through the Auctioneer.
- 3.4 All Equipment in the Auction shall be sold to the highest bidder subject only to a purchaser's timely payment in full and removal of purchased assets. Auctioneer, however, does not guarantee that any sale will be completed, and Auctioneer is not responsible in the event that a purchaser fails to live up to its agreement and complete a purchase.
- 3.5 All risks of loss to the Equipment shall remain with Seller until its sale pursuant to the terms hereof.

SECTION 4. COMPENSATION AND DISTRIBUTION

- 4.1 Auctioneer shall receive a commission equal to 5% of the gross proceeds of sale (the "Commission"). For purposes of this Agreement, "gross proceeds", means all revenue from the sale of Equipment pursuant to this Agreement, excluding (i) any sales taxes collected by Auctioneer, and (ii) any Buyer's Premium collected pursuant to this Section 4. Separately, Auctioneer shall charge each successful bidder its standard buyer's premium (the "Buyer's Premium") for its own account as compensation for auction services provided up to and including the actual Auction event. Auctioneer shall collect the Buyer's Premium directly from each purchaser in addition to the purchase price as bid for such Auction services. Payment to Auctioneer of such Buyer's Premium by the successful bidder is not dependent on any other service provided by Auctioneer in connection with the Auction subsequent to the actual Auction event, if any. Auctioneer will charge a 16% Buyer's Premium for payments via cash instrument and 19% for payments via credit card.
- 4.2 In addition to its Commission, Auctioneer shall be reimbursed for actual expenses incurred in advertising, preparing, and selling the Equipment and supervising its removal; provided, however, that such reimbursement shall not exceed \$5,000.00.
- 4.3 Seller shall be responsible for all applicable sales taxes and conveyance taxes in accordance with Sections 4.1 and 4.2.

- 4.4 Auctioneer shall have the right to retain from the moneys received from the sale of the Equipment, all compensation due in accordance with Sections 4.1 and 4.2.
- 4.5 All moneys due Seller from sales of Equipment shall be remitted to Seller within thirty (30) business days following the Auction sale dates subject only to open items or uncollected accounts, if any.

SECTION 5. SELLER'S ADDITIONAL OBLIGATIONS

- 5.1 Seller shall maintain fire and casualty insurance coverage on the Premises and "All Risk" insurance coverage on the Equipment, including fire, extended coverage, vandalism and malicious mischief. Such insurance shall be on terms, in amounts and with carriers that are reasonable and acceptable to Auctioneer. Seller shall continue the insurance coverage in effect for the duration of this Agreement.
- 5.2 Seller shall provide, at its sole cost, security, all utility services (including, but not limited to, heat, lights, power and water), snow removal and maintenance for the Premises. Seller will also provide the necessary data and phone lines to conduct the onsite "Webcast" auction. Seller shall provide dumpsters for refuse removal if necessary.
- 5.3 Auctioneer will not be responsible for any claims arising from "contaminated, regulated substances or hazardous materials" as defined by all federal, state and local environment law and regulation. Further, Seller hereby indemnifies Auctioneer against any and all claims arising as a result of contaminated or regulated substances.
- 5.4 If Seller purchases any of the Equipment at the public auction sale, then, Auctioneer will be entitled to compensation in accordance with Section 4.
- 5.5 In the event that walls or other structures must be removed or modified to remove the Equipment sold at the sale, all supervision and expense of such removal and modification shall be borne directly by the Seller and are not included in the sale allowance.

SECTION 6. UTILITY DISCONNECTION AND ASSET REMOVAL

- 6.1 Immediately after the Auction, Seller shall disconnect all utilities to each sold asset, including electric, gas, waste and water lines, in a reasonable manner designed to protect the asset and the Premises, at Seller's sole cost. Thereafter, the purchaser shall be solely responsible for rigging and shipping each sold asset.
- 6.2 Seller will assist and supervise the removal of the assets from the Premises. Under no circumstances shall Auctioneer be responsible for anything associated with asset removal or disconnection.
- 6.3 In the event a purchaser does not remove a purchased asset from the Premises on or before the Termination Date, any such property remaining on the Premises thereafter shall no longer be considered as the purchaser's asset and title thereto shall revert to Seller and Seller may dispose of same as he sees fit. In any event, Auctioneer shall have the right to abandon any of the unsold items from Schedule A.

SECTION 7. AUCTIONEER'S ADDITIONAL OBLIGATIONS

- 7.1 Auctioneer shall furnish the necessary labor and supplies to conduct the Auction.

- 7.2 Auctioneer shall use reasonable efforts to obtain the highest available prices that may be obtained from buyers of the Equipment.
- 7.3 Auctioneer shall collect sales tax, if applicable, from buyers purchasing at the Auction, and report and remit the sums collected to the proper authorities.

SECTION 8. ADVERTISING

- 8.1 Auctioneer will prepare notices, brochures and catalogs, and distribute such advertising to potential purchasers of the Equipment as Auctioneer deems appropriate.
- 8.2 Auctioneer shall be permitted to advertise through mailing or otherwise the Auction of the Equipment. Seller agrees that Auctioneer may use the street address of the Premises in advertising of this sale, as well as on the Website.

SECTION 9. LIMITATION OF LIABILITY AND TECHNOLOGY DISCLAIMER


- 9.1 Auctioneer's maximum liability for the breach of any obligation in connection with this Agreement or the Sale, and for any and all damages of any type or nature (whether in contract, tort or otherwise) sustained or claimed by Seller or any other person or entity in connection with this Agreement or the Sale, shall be limited to the amounts actually received by Auctioneer as compensation under this Agreement.
- 9.2 Auctioneer does not warrant that the functions, features or content contained in the Website, including any third-party software, products or other materials used in connection with the Website, will be timely, secure, uninterrupted or error-free, or that defects will be corrected.

SECTION 10. MISCELLANEOUS

- 10.1 This Agreement sets forth the entire agreement between the parties, and supersedes any prior written or oral understanding, and in particular supersedes any terms and conditions which Auctioneer may have included with its proposal.
- 10.2 This Agreement shall not be modified or amended except by written instrument agreed to by all the parties hereto.
- 10.3 This Agreement may not be assigned, except that Auctioneer may involve subcontractors in connection with Auction and sale by either party hereto without the prior written consent of the other. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their permitted assigns and successors, and shall be construed under the law of the State of Wisconsin.
- 10.4 Seller hereby indemnifies and holds harmless Auctioneer, its affiliates, and their respective officers, directors, employees, agents and representatives from and against any and all liabilities, losses, damages, claims or causes of action, and any expenses connected therewith, including reasonable attorneys' fees, which directly or indirectly are based upon or arise out of (i) death, bodily injury or property damage caused or incurred by Seller and/or its agents or employees in the course of performing any services or work under this Agreement, or while on the Premises of the Seller; (ii) the breach by Seller of any representation, warranty, covenant, term or condition under this Agreement; or (iii) the gross negligence or intentional misconduct by Seller and/or its agents or employees.

IN WITNESS WHEREOF, the respective parties hereto have executed this Agreement by
their duly authorized officer and representative as of the day and year first above written.

TIMOTHY P. BRENNAN



BRANFORD AUCTIONS, LLC

BY: 

Print Name: James Gardner
Title: partner

SCHEDULE A

2007 Harrington 10 Ton Bridge Crane 58' Span, with Harrington 10 Ton and 3 Ton Hoists and Wireless Crane Remote Controller

2007 Harrington 10 Ton Bridge Crane 58' Span, with Harrington 10 Ton and 3 Ton Hoists and Wireless Crane Remote Controller

2007 Crane Works 20 Ton Bridge Crane, 58' Span with 20 Ton and 3 Ton Hoists and Wireless Crane Remote Controller

2007 Crane Works 20 Ton Bridge Crane, 58' Span with 20 Ton and 3 Ton Hoists and Wired Crane Remote Controller

1 Ton Jib Crane, 24' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 24' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 24' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 24' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 22' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 30' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 18' Arm, 17' Column, 19' Arm Height

1 Ton Jib Crane, 24' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 20' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 30' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 24' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 30' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 30' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 24' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 30' Arm, 17' Column, 12' Arm Height

1 Ton Jib Crane, 20' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

1 Ton Jib Crane, 30' Arm, 17' Column, 12' Arm Height, with Harrington 1 Ton Hoist

2010 Gardner Denver VS70A Rotary Screw Compressor, 70Kw 460V 3PH, S/N S330655

2010 Gardner Denver EBM99K Rotary Screw Compressor, 75HP 460V 3PH, 2420 Load Hrs, S/N S337284

Airtek SCP800-A4 Refrigerated Air Dryer, 800SCFM @ 100PSI Cap, 460V 3PH, S/N 100400263

Compressed Air Receiving Tank, 13'x48" Dia