



## STATE OF WISCONSIN

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**Real Estate Contractual Forms Council  
Room 121A, 1400 E. Washington Avenue, Madison  
Contact: Mojgan Hall - 608-261-4486  
January 17, 2013**

*The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions and deliberations of the Board.*

**FULL BOARD MEETING  
10:00 A.M. – 2:30 P.M.**

OPEN SESSION – CALL TO ORDER – ROLL CALL

**A. Adoption of Agenda (1-2)**

**B. Approval of Minutes – December 4, 2012 (3)**

C. Secretary Matters

D. Executive Director Matters

**E. Review and Revise Exclusive Listing Contract for Lease or Rental of Real Property (WB-37)**

- 1) WRA Memo with Proposed Changes (5)
- 2) WB-37 as modified by Council on 12/4/12 (7-12)
- 3) WB-37 with WRA Proposed Changes (with no “tracking”) (13-17)

**F. Review and Revise Business Listing Contract (WB-6)**

- 1) WRA Memo with Proposed Changes (19-27)
- 2) WB-6 as modified by Council on 12/4/12 (29-36)
- 3) WB-6, with WRA Proposed Changes (with “tracking”). (38-45)

**G. WB-16 Business With Real Estate-Offer to Purchase**

- 1) WRA Memo With Proposed Changes (47-53)
- 2) WB-16 With WB-15 Changes (with no “tracking”) (55-64)
- 3) WB-16 With WB-15 Changes (with “tracking”) (65-75)

**H. Priority of Remaining Forms**

- 1) WB-17 Business without Real Estate – Offer to Purchase
- 2) Time Share Issues
- 3) WB-35 Simultaneous Exchange Agreement

I. Informational Items

J. New Business

K. Public Comments

L. Next Meeting Date: March 7, 2013

**ADJOURNMENT**

**REAL ESTATE CONTRACTUAL FORMS  
ADVISORY COMMITTEE  
MEETING MINUTES  
DECEMBER 4, 2012**

**PRESENT:** Stephen Beers, Debra Conrad, Jack Drzewicki, Michael Gordon, Cori Lamont , Scott Minter, Kim Moermond, Jonathan Sayas, Peter Sveum, Gary Tritz.

**EXCUSED:**

**STAFF:** Mojgan Hall, Executive Director; David Carlson, Communications Specialist; and other Department staff

Stephen Beers, Chair, called the meeting to order at 10:04 a.m. A quorum of ten (10) members was confirmed.

**ADOPTION OF AGENDA**

**MOTION:** Scott Minter moved, seconded by Michael Gordon, to adopt the agenda as published. Motion carried unanimously.

**APPROVAL OF MINUTES**

**MOTION:** Lamont moved, seconded by Gary Tritz, to approve the minutes of October 29, 2012 as published. Motion carried unanimously.

The Council recessed for lunch at 11:50 a.m. and reconvened at 12:25 p.m.

**ADJOURNMENT**

**MOTION:** Michael Gordon moved, seconded by Peter Sveum, to adjourn the meeting at 2:27 p.m. Motion carried unanimously.

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**REVISIONS TO WB-37 RESIDENTIAL LISTING CONTRACT  
– EXCLUSIVE RIGHT TO RENT**

To: DSPS Real Estate Contractual Forms Advisory Council

From: WRA Forms Committee

Date: January 17, 2013

RE: **WB-37 Residential Listing Contract – Exclusive Right to Rent**

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Accompanying this memo is the WB-37 Residential Listing Contract – Exclusive Right to Rent draft labeled “20130117 WB-37 Form – Use Me.” This draft of the WB-37 reflects the modifications made by the DSPS Real Estate Contractual Forms Advisory Council at its December 4 meeting. Any line references in this memo are to this (Use Me) draft.

There are four items for the committee’s consideration on January 17 and I have highlighted those in green:

- 1) Line 8: include a reference to lines 16-19 (additional rental terms).
- 2) Line 113: added the word “see” for consistency
- 3) Line 148: added the words “or in an addendum per line 249”
- 4) Lines 211-212: change the language from “at least” to “not less than” – this change was recommended because even though the sentence begins on line 210 with heating facilities there has been confusion that the temperature must always be at least 67 degrees including the summer months.

WB37RevisionsDSPS1-17-13

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**WB-37 RESIDENTIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO RENT**

**Do not use as a property management agreement or listing for sale.**

1 Owner gives Broker the exclusive right to rent the rental unit(s) located at \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_ (street address) in the \_\_\_\_\_ of  
4 \_\_\_\_\_ County of \_\_\_\_\_, Wisconsin ("Premises"), more particularly  
5 described as: \_\_\_\_\_  
6 \_\_\_\_\_ (list unit numbers if applicable) (the "Rental Units"), under  
7 the terms of this Listing. Insert additional description at lines xxx-xxx or in an addendum per line xxx, as needed.

8 **RENTAL UNITS AND RENTAL TERMS:** List the individual Rental Unit(s) and specify proposed rental terms below or at lines xxx-xxx, or attach  
9 as an addendum per line xxx. Consider addressing furniture, appliances, equipment, designated parking and storage areas, utilities and  
10 restrictions on tenant's use and occupancy (pets, smoking, etc.). Also see lines xx-xx regarding repairs/build-outs Owner agrees to complete.

11	UNIT NO.	RENT	SECURITY DEP.	MINIMUM TERM	CURRENT STATUS	OTHER RENTAL TERMS
12		\$	\$			
13		\$	\$			
14		\$	\$			
15		\$	\$			

16 **ADDITIONAL RENTAL TERMS** \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_

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

22 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line xx or xx.  
23 Owner's recipient for delivery (optional): \_\_\_\_\_  
24 Broker's recipient for delivery (optional): \_\_\_\_\_

25  (2) **Fax:** fax transmission of the document or written notice to the following telephone number:  
26 Owner: (\_\_\_\_\_) \_\_\_\_\_ Broker: (\_\_\_\_\_) \_\_\_\_\_

27  (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery  
28 service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at  
29 line xx or xx.

30  (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  
31 recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx or xx.

32 Delivery address for Owner: \_\_\_\_\_  
33 Delivery address for Broker: \_\_\_\_\_

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

38 E-Mail address for Owner: \_\_\_\_\_  
39 E-Mail address for Broker: \_\_\_\_\_

40 **EXCLUSIONS:** All persons who may acquire an interest in the Rental Unit(s) as a Protected Tenant under a prior listing contract are excluded  
41 from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing. Within seven days of the date of this Listing,  
42 Owner agrees to deliver to Broker a written list of all such prospective tenants. The following other tenants are excluded from this Listing until  
43 \_\_\_\_\_ [INSERT DATE] \_\_\_\_\_  
44 \_\_\_\_\_

45 These other tenants are no longer excluded from this Listing after the specified date unless, on or before the specified date, Owner has either  
46 entered into a written Rental Agreement with the tenants or rented the Rental Unit(s) to the tenants.

47 **BROKER'S COMMISSION** Owner agrees to pay Broker a commission in the amount of \_\_\_\_\_  
48 \_\_\_\_\_ which shall be

49 due and payable at the earlier of the execution of the Rental Agreement or the occupancy of the Rental Unit(s), unless otherwise agreed in writing  
50 if; (a) Owner enters into a Rental Agreement as to a Rental Unit(s); or (b) Owner allows a tenant to occupy and pay rent for a Rental Unit(s).

51 **COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: \_\_\_\_\_  
52 \_\_\_\_\_

53 (Exceptions if any): \_\_\_\_\_

54 ■ **BROKER DISCLOSURE TO CLIENTS:**

55 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 56 (a) The duty to provide brokerage services to you fairly and honestly.  
 57 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.  
 58 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the  
 59 information is prohibited by law.  
 60 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by  
 61 law. (See lines xxx-xxx)  
 62 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential  
 63 information of other parties. (See lines xxx-xxx)  
 64 (f) The duty to safeguard trust funds and other property the broker holds.  
 65 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and  
 66 disadvantages of the proposals.

67 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE BROKER'S CLIENT. A BROKER  
 68 OWES ADDITIONAL DUTIES TO A CLIENT:**

- 69 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the  
 70 broker from this duty.  
 71 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.  
 72 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within the scope of the  
 73 agency agreement.  
 74 (d) The broker will negotiate for you, unless you release the broker from this duty.  
 75 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give information or advice  
 76 to other parties who are not the broker's clients, if giving the information or advice is contrary to your interests.  
 77 (f) If you become involved in a transaction in which another party is also the broker's client (a "multiple representation relationship"), different  
 78 duties may apply.

79 ■ **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

- 80 ■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a party in the same  
 81 transaction. In a multiple representation relationship, if all of the broker's clients in the transaction consent, the broker may provide services to  
 82 the clients through designated agency.  
 83 ■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the other client or clients in  
 84 the transaction, and the broker's duties will remain the same. Each salesperson will provide information, opinions, and advice to the client for  
 85 whom the salesperson is negotiating, to assist the client in the negotiations. Each client will be able to receive information, opinions, and advice  
 86 that will assist the client, even if the information, opinions, or advice gives the client advantages in the negotiations over the broker's other  
 87 clients. A salesperson will not reveal any of your confidential information to another party unless required to do so by law.  
 88 ■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If you authorize a multiple  
 89 representation relationship the broker may provide brokerage services to more than one client in a transaction but neither the broker nor any of  
 90 the broker's salespersons may assist any client with information, opinions, and advice which may favor the interests of one client over any other  
 91 client. If you do not consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more than  
 92 one client in the transaction.

93 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

94 \_\_\_\_\_ I consent to designated agency.

95 \_\_\_\_\_ I consent to multiple representation relationships, but I do not consent to designated agency.

96 \_\_\_\_\_ I reject multiple representation relationships.

97 NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION RELATIONSHIPS BY  
98 WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY  
99 AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE  
100 COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR BROKER  
101 YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY AGREEMENT.

102 ■ **SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist your broker by providing  
103 brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your interests. A subagent will not, unless  
104 required by law, provide advice or opinions to other parties if doing so is contrary to your interests.

105 **PLEASE REVIEW THIS INFORMATION CAREFULLY. A broker or salesperson can answer your questions about brokerage services, but**  
106 **if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector. This**  
107 **disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language summary of a**  
108 **broker's duties to you under section 452.133 (2) of the Wisconsin statutes.**

109 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** Broker will keep confidential any information given to Broker in confidence, or any information  
110 obtained by Broker that he or she knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law  
111 or you authorize Broker to disclose particular information. Broker shall continue to keep the information confidential after Broker is no longer  
112 providing brokerage services to you.

113 The following information is required to be disclosed by law:

114 1) Material adverse facts, as defined in section 452.01(5g) of the Wisconsin statutes (lines xxx-xxx).

115 2) Any facts known by the Broker that contradict any information included in a written inspection report on the property or real estate that is the  
116 subject of the transaction.

117 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information below (see lines xxx-xxx).

118 At a later time, you may also provide the Broker with other information you consider to be confidential.

119 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

120 \_\_\_\_\_

121 \_\_\_\_\_

122 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): \_\_\_\_\_

123 \_\_\_\_\_

124 \_\_\_\_\_

125 ■ **COOPERATION, ACCESS TO RENTAL UNIT(S) OR PROPOSAL PRESENTATION:** The parties agree that Broker will work and cooperate  
126 with other brokers in marketing the Rental Unit(s), including brokers from other firms acting as subagents (agents from other companies engaged  
127 by Broker - See lines xxx-xxx) and brokers representing tenants. Cooperation includes providing access to the Rental Unit(s) for showing  
128 purposes and presenting Rental Agreement proposals from these brokers to Owner. Note any brokers with whom Broker shall not cooperate, any  
129 brokers or tenants who shall not be allowed to attend showings, and the specific terms of proposed Rental Agreements which should not be  
130 submitted to Owner: \_\_\_\_\_

131 \_\_\_\_\_

132 **CAUTION:** Limiting Broker's cooperation with other brokers may reduce the marketability of the Rental Unit(s).

133 **MARKETING AND OWNER AUTHORIZATION** Owner authorizes Broker and Broker agrees to use reasonable efforts to rent the Rental Unit(s).

134 Broker's marketing may include use of a multiple listing service, Internet advertising, a lockbox system on the Rental Unit(s) and: \_\_\_\_\_

135 \_\_\_\_\_

136 \_\_\_\_\_ Broker may advertise the following

137 incentives, repairs, build-outs, credits, etc. offered by Owner: \_\_\_\_\_

138 \_\_\_\_\_

139 Owner agrees that Broker may market other properties during the term of this Listing.

140 Broker may perform the following additional services: [COMPLETE AND CHECK AS APPLICABLE]

141  Solicit tenant applications

142  Qualify and approve prospective tenants

143  Negotiate Rental Agreements of the Rental Unit(s)

144  Receive on behalf of Owner: application fee(s), earnest money, security deposit(s) **STRIKE AS APPLICABLE**

145  Execute written Rental Agreements on behalf of Owner

146  Other: \_\_\_\_\_

147  Other: \_\_\_\_\_

148 **NOTE: This is not a property management agreement and this Listing does not obligate Broker to perform any property management**  
149 **duties, including maintenance, unless specified at lines xx-xx or xxx-xxx.**

150 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Tenant. Upon receipt of a written request  
151 from Owner or a broker who has listed the Rental Unit(s), Broker agrees to promptly deliver to Owner a written list of those tenants known by

152 Broker to whom the extension period applies. Should this Listing be terminated by Owner prior to the expiration of the term stated in this Listing,  
153 this Listing shall be extended for Protected Tenants, on the same terms, for one year after the Listing is terminated.

154 ■ **NOTICE ABOUT SEX OFFENDER REGISTRY:** You may obtain information about the sex offender registry and persons registered with the  
155 registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by telephone at (608)240-  
156 5830.

157 ■ **DEFINITIONS:**

158 **ADVERSE FACT:** An "adverse fact" means any of the following:

159 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 160 1) Significantly and adversely affecting the value of the Premises;
- 161 2) significantly reducing the structural integrity of improvements to real estate; or
- 162 3) presenting a significant health risk to occupants of the Premises.

163 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or  
164 agreement made concerning the transaction.

165 **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the event occurred and by  
166 counting subsequent calendar days.

167 **LEASE:** "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a  
168 definite period of time. A Lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the  
169 commencement and expiration can be ascertained by reference to some event, such as completion of a building. An agreement for transfer of  
170 possession of only personal property is not a Lease.

171 **MATERIAL ADVERSE FACT:** A "material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally  
172 recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter  
173 into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or  
174 agreement.

175 **PROTECTED TENANT:** Means a tenant who personally, or through any person acting for such tenant, during the term of the Listing: 1) delivers to  
176 Owner or Broker a written rental proposal regarding a Rental Unit; 2) negotiates directly with Owner by discussing with Owner the potential terms  
177 upon which tenant might acquire a rental interest in a Rental Unit; or 3) attends an individual showing of a Rental Unit or discusses with Broker or  
178 cooperating brokers the potential terms upon which tenant might acquire a rental interest in a Rental Unit, but only if Broker delivers the tenant's  
179 name to Owner, in writing, no later than three days after the expiration of the Listing. The requirement in 3), to deliver the tenant's name to Owner  
180 in writing, may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the identification  
181 of the individuals in the Listing; or, b) if a tenant has requested that the tenant's identity remain confidential, by delivery of a written notice  
182 identifying the broker with whom the tenant negotiated and the date(s) of any showings or other negotiations. A tenant who becomes protected  
183 with respect to one Rental Unit included in this Listing shall be a Protected Tenant for all Rental Units included in this Listing.

184 **RENTAL AGREEMENT:** "Rental Agreement" means an oral or written agreement between a landlord and tenant, for the rental or Lease of a  
185 specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent. Rental Agreement  
186 includes a Lease. Rental Agreement does not include an agreement to enter into a Rental Agreement in the future.

187 ■ **NON-DISCRIMINATION:** Owner and Broker agree that they will not discriminate against any prospective tenant on account of race,  
188 color, sex, sexual orientation as defined in Wis. Stat. § 111.32 (13m), disability, religion, national origin, marital status, lawful source of  
189 income, age, ancestry, familial status or in any other unlawful manner.

190 **COOPERATION WITH MARKETING EFFORTS** During the term of this Listing, Owner agrees to:

- 191 (1) Allow Broker to show the Rental Unit(s) at reasonable times and with Owner providing notice to existing tenants as required by law;
- 192 (2) Allow Broker to advertise, including placing signage upon the Premises; and
- 193 (3) Cooperate with Broker in Broker's marketing efforts and immediately provide to Broker, in writing, the names of any prospective tenants  
194 known to Owner or who contact Owner, and their contact information.

195 **OWNER'S OBLIGATIONS** During the term of this Listing, Owner agrees to provide to Broker:

- 196 (1) Copies of all code violation orders and notices, information and reports regarding any lead-based paint on the Premises, and all other records  
197 and documents relating to conditions affecting the Premises; and
- 198 (2) Any Owner-approved Rental Agreement, nonstandard rental provisions, addenda, rules and regulations and related forms and materials  
199 required in connection with the renting of the Rental Unit(s).

200 **OWNER'S WARRANTIES, COVENANTS AND REPRESENTATIONS** Owner represents any materials and information given to Broker by  
201 Owner are true and complete and that the Rental Agreement and other forms provided to Broker by Owner comply with all applicable laws. Owner  
202 agrees to hold Broker harmless from loss by reason of Broker's use of these materials, forms and information pursuant to the terms of this Listing,  
203 including the payment of reasonable attorney's fees in the event of any suit against Broker arising out of the use of these materials, forms and  
204 information.

205 Owner warrants and represents to Broker that:

- 206 (1) Owner has no notice or knowledge of any of the following conditions affecting the Premises unless indicated at lines xxx-xxx or in an  
207 attached addendum per line xxx, or disclosed in the documentation Owner has provided to Broker:
  - 208 (a) Uncorrected code violations as described in Wis. Stat. § 704.07(2)(bm);
  - 209 (b) A lack of hot or cold running water;
  - 210 (c) Plumbing or sewage disposal facilities that are not in good operating condition;

- 211 (d) Heating facilities serving any rental unit that are not in safe operating condition, or are not capable of maintaining a
- 212 temperature, measured in occupied areas at the approximate center of the room, midway between floor and ceiling, of at least
- 213 67° F (19° C) during all seasons of the year that the rental unit is occupied;
- 214 (e) A lack of electrical service, or electrical wiring, outlets, fixtures or other components of the electrical system that are not in safe
- 215 operating condition;
- 216 (f) Any structural or other conditions in the Premises which constitute a substantial hazard to the health or safety of the tenant(s),
- 217 or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the Premises other than
- 218 negligent use or abuse of the Premises by tenant(s);
- 219 (2) Other conditions or occurrences which would significantly reduce the value of the rental interest to a reasonable person with knowledge
- 220 of the nature and scope of the condition or occurrence. Owner has made no rent concessions or other agreements affecting the Rental
- 221 Unit(s).
- 222 (3) Owner agrees to make the following repairs and build-outs to the Premises: \_\_\_\_\_

223 \_\_\_\_\_

224 \_\_\_\_\_ **STRIKE AND COMPLETE AS APPLICABLE**

225 Exceptions to representations stated in lines xx-xx: \_\_\_\_\_

226 \_\_\_\_\_

227 \_\_\_\_\_

228 Owner agrees to promptly inform Broker, in writing, of any information that would modify the above representations during the term of this Listing.

229 **WARNING: IF OWNER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, OWNER MAY BE LIABLE FOR DAMAGES AND**

230 **COSTS.**

231 ■ **TERMINATION OF LISTING:** Neither Owner nor Broker has the legal right to unilaterally terminate this Listing absent a material breach of

232 contract by the other party. Owner understands that the parties to the Listing are Owner and the Broker (firm). Agents (salespersons) for Broker

233 (firm) do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of

234 this Listing, without the written consent of the agent(s)' supervising broker. Owner and Broker agree that any termination of this Listing by either

235 party before the date stated on line xxx shall be indicated to the other Party in writing and shall not be effective until delivered to the other Party in

236 accordance with lines xxx-xxx. CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating Party to potentially

237 be liable for damages. The Parties agree that this Listing shall terminate upon an effective change in ownership or control of the Rental Unit(s) so

238 affected, but in no event shall this Listing terminate as to the remainder of the Rental Unit(s).

239 **TERMINATION FEE PER RENTAL UNIT** If this Listing is terminated as to one or more of the Rental Unit(s) because of an effective change in

240 ownership or control of the Rental Unit(s), Owner agrees to pay Broker a termination fee in the amount of \_\_\_\_\_

241 \_\_\_\_\_

242 \_\_\_\_\_ (insert dollar amount, formula, etc.) per Rental Unit terminated.

243 **ADDITIONAL PROVISIONS** \_\_\_\_\_

244 \_\_\_\_\_

245 \_\_\_\_\_

246 \_\_\_\_\_

247 \_\_\_\_\_

248 \_\_\_\_\_

249 \_\_\_\_\_

250 \_\_\_\_\_

251 \_\_\_\_\_

252 \_\_\_\_\_

253 \_\_\_\_\_

254 \_\_\_\_\_

255 \_\_\_\_\_

256 \_\_\_\_\_

257 \_\_\_\_\_

258 \_\_\_\_\_

259 \_\_\_\_\_

260 **ADDENDA** The attached \_\_\_\_\_ is/are made part of this Listing.

261 **CAUTION: IF SIGNED, THIS LISTING CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BROKERS MAY PROVIDE A GENERAL**

262 **EXPLANATION OF THE PROVISIONS OF THIS LISTING OR OTHER REAL ESTATE CONTRACTS, BUT ARE PROHIBITED BY LAW FROM**

263 **GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS LISTING OR ANY OTHER REAL ESTATE CONTRACT.**

264 **AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED. OWNER SHOULD CONSULT OTHER EXPERTS AS**

265 **APPROPRIATE, FOR EXAMPLE, APPRAISERS, TAX ADVISORS, OR INSPECTORS IF SERVICES BEYOND BROKER'S MARKETING**

266 **SERVICES ARE REQUIRED.**

267 ■ **TERM OF THE CONTRACT:** From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, up to and including

268 midnight of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. In the event a commission is earned for a

269 Rental Unit, this Listing (shall) (shall not) **STRIKE ONE** ("shall" if neither is stricken) terminate for that Rental Unit.

270 ■ **READING/RECEIPT: BY SIGNING BELOW, OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS LISTING CONTRACT AND THAT**

271 **HE/SHE HAS READ ALL 5 PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

272 Owner Entity Name (if any): \_\_\_\_\_

273 (x) \_\_\_\_\_

274 Owner's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲

275 (x) \_\_\_\_\_

276 Owner's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲

277 (x) \_\_\_\_\_

278 Agent for Broker ▲ Print Name Here: ▲ Broker/Firm Name ▲ Date ▲

**WB-37 RESIDENTIAL LISTING CONTRACT - EXCLUSIVE RIGHT TO RENT**

**Do not use as a property management agreement or listing for sale.**

1 Owner gives Broker the exclusive right to rent the rental unit(s) located at \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_ (street address) in the \_\_\_\_\_ of  
4 \_\_\_\_\_ County of \_\_\_\_\_, Wisconsin ("Premises"), more particularly  
5 described as: \_\_\_\_\_  
6 \_\_\_\_\_ (list unit numbers if applicable) (the "Rental Units"), under  
7 the terms of this Listing. Insert additional description at lines 243-248 or in an addendum per line 249, as needed.

8 **RENTAL UNITS AND RENTAL TERMS:** List the individual Rental Unit(s) and specify proposed rental terms below or at lines 16-19, 243-248, or  
9 attach as an addendum per line 249. Consider addressing furniture, appliances, equipment, designated parking and storage areas, utilities and  
10 restrictions on tenant's use and occupancy (pets, smoking, etc.). Also see lines 221-223 regarding repairs/build-outs Owner agrees to complete.

UNIT NO.	RENT	SECURITY DEP.	MINIMUM TERM	CURRENT STATUS	OTHER RENTAL TERMS
	\$	\$			
	\$	\$			
	\$	\$			
	\$	\$			

16 **ADDITIONAL RENTAL TERMS** \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_

20 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Listing, delivery of documents and written notices to a  
21 Party shall be effective only when accomplished by one of the methods specified at lines 22-39.

22 (1) **Personal Delivery:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line 23 or 24.  
23 Owner's recipient for delivery (optional): \_\_\_\_\_  
24 Broker's recipient for delivery (optional): \_\_\_\_\_

25  (2) **Fax:** fax transmission of the document or written notice to the following telephone number:  
26 Owner: (\_\_\_\_\_) \_\_\_\_\_ Broker: (\_\_\_\_\_) \_\_\_\_\_

27  (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery  
28 service, addressed either to the Party, or to the Party's recipient for delivery if named at line 23 or 24, for delivery to the Party's delivery address at  
29 line 32 or 33.

30  (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  
31 recipient for delivery if named at line 32 or 33, for delivery to the Party's delivery address at line 32 or 33.  
32 Delivery address for Owner: \_\_\_\_\_  
33 Delivery address for Broker: \_\_\_\_\_

34  (5) **E-Mail:** electronically transmitting the document or written notice to the Party's e-mail address, if given below at line 38 or 39. If this is a  
35 consumer transaction where the property being rented or the rental proceeds are used primarily for personal, family or household purposes, each  
36 consumer providing an e-mail address below has first consented electronically to the use of electronic documents, e-mail delivery and electronic  
37 signatures in the transaction, as required by federal law.

38 E-Mail address for Owner: \_\_\_\_\_  
39 E-Mail address for Broker: \_\_\_\_\_

40 **EXCLUSIONS:** All persons who may acquire an interest in the Rental Unit(s) as a Protected Tenant under a prior listing contract are excluded  
41 from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing. Within seven days of the date of this Listing,  
42 Owner agrees to deliver to Broker a written list of all such prospective tenants. The following other tenants are excluded from this Listing until  
43 \_\_\_\_\_ [INSERT DATE] \_\_\_\_\_  
44 \_\_\_\_\_. These other tenants are no longer excluded from this Listing after the specified date unless, on  
45 or before the specified date, Owner has either entered into a written Rental Agreement with the tenants or rented the Rental Unit(s) to the tenants.

46 **BROKER'S COMMISSION** Owner agrees to pay Broker a commission in the amount of \_\_\_\_\_  
47 \_\_\_\_\_ which shall be  
48 due and payable at the earlier of the execution of the Rental Agreement or the occupancy of the Rental Unit(s), unless otherwise agreed in writing  
49 if; (a) Owner enters into a Rental Agreement as to a Rental Unit(s); or (b) Owner allows a tenant to occupy and pay rent for a Rental Unit(s).

50 **COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: \_\_\_\_\_  
51 \_\_\_\_\_  
52 (Exceptions if any): \_\_\_\_\_

53 ■ **BROKER DISCLOSURE TO CLIENTS:**

54 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 55 (a) The duty to provide brokerage services to you fairly and honestly.
- 56 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 57 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless disclosure of the  
58 information is prohibited by law.
- 59 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is prohibited by  
60 law. (see lines 170-173)
- 61 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or the confidential  
62 information of other parties. (see lines 108-123)
- 63 (f) The duty to safeguard trust funds and other property the broker holds.
- 64 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages and  
65 disadvantages of the proposals.

66 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE BROKER'S CLIENT. A BROKER  
67 OWES ADDITIONAL DUTIES TO A CLIENT:**

- 68 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you release the  
69 broker from this duty.
- 70 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.
- 71 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within the scope of the  
72 agency agreement.
- 73 (d) The broker will negotiate for you, unless you release the broker from this duty.
- 74 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give information or advice  
75 to other parties who are not the broker's clients, if giving the information or advice is contrary to your interests.
- 76 (f) If you become involved in a transaction in which another party is also the broker's client (a "multiple representation relationship"), different  
77 duties may apply.

78 ■ **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

79 ■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a party in the same  
80 transaction. In a multiple representation relationship, if all of the broker's clients in the transaction consent, the broker may provide services to  
81 the clients through designated agency.

82 ■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the other client or clients in  
83 the transaction, and the broker's duties will remain the same. Each salesperson will provide information, opinions, and advice to the client for  
84 whom the salesperson is negotiating, to assist the client in the negotiations. Each client will be able to receive information, opinions, and advice  
85 that will assist the client, even if the information, opinions, or advice gives the client advantages in the negotiations over the broker's other  
86 clients. A salesperson will not reveal any of your confidential information to another party unless required to do so by law.

87 ■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If you authorize a multiple  
88 representation relationship the broker may provide brokerage services to more than one client in a transaction but neither the broker nor any of  
89 the broker's salespersons may assist any client with information, opinions, and advice which may favor the interests of one client over any other  
90 client. If you do not consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more than  
91 one client in the transaction.

92 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

93 \_\_\_\_\_ | consent to designated agency.

94 \_\_\_\_\_ | consent to multiple representation relationships, but I do not consent to designated agency.

95 \_\_\_\_\_ | reject multiple representation relationships.

96 **NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION RELATIONSHIPS BY**  
97 **WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO YOU IN YOUR AGENCY**  
98 **AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE ANY QUESTIONS ABOUT THE**  
99 **COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY RELATIONSHIP YOU SELECT WITH YOUR**  
100 **BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY AGREEMENT.**

101 ■ **SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist your broker by providing  
102 brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your interests. A subagent will not, unless  
103 required by law, provide advice or opinions to other parties if doing so is contrary to your interests.

104 **PLEASE REVIEW THIS INFORMATION CAREFULLY. A broker or salesperson can answer your questions about brokerage services, but**  
105 **if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector. This**  
106 **disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain language summary of a**  
107 **broker's duties to you under section 452.133 (2) of the Wisconsin statutes.**

108 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** Broker will keep confidential any information given to Broker in confidence, or any information  
109 obtained by Broker that he or she knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law  
110 or you authorize Broker to disclose particular information. Broker shall continue to keep the information confidential after Broker is no longer  
111 providing brokerage services to you.

112 The following information is required to be disclosed by law:

113 1) Material adverse facts, as defined in section 452.01(5g) of the Wisconsin statutes (see lines 170-173).

114 2) Any facts known by the Broker that contradict any information included in a written inspection report on the property or real estate that is the  
115 subject of the transaction.

116 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information below (see lines 118-120).

117 At a later time, you may also provide the Broker with other information you consider to be confidential.

118 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

119 \_\_\_\_\_

120 \_\_\_\_\_

121 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): \_\_\_\_\_

122 \_\_\_\_\_

123 \_\_\_\_\_

124 ■ **COOPERATION, ACCESS TO RENTAL UNIT(S) OR PROPOSAL PRESENTATION:** The parties agree that Broker will work and cooperate  
125 with other brokers in marketing the Rental Unit(s), including brokers from other firms acting as subagents (agents from other companies engaged  
126 by Broker - see lines 101-103) and brokers representing tenants. Cooperation includes providing access to the Rental Unit(s) for showing  
127 purposes and presenting Rental Agreement proposals from these brokers to Owner. Note any brokers with whom Broker shall not cooperate, any  
128 brokers or tenants who shall not be allowed to attend showings, and the specific terms of proposed Rental Agreements which should not be  
129 submitted to Owner: \_\_\_\_\_

130 \_\_\_\_\_

131 **CAUTION: Limiting Broker's cooperation with other brokers may reduce the marketability of the Rental Unit(s).**

132 **MARKETING AND OWNER AUTHORIZATION** Owner authorizes Broker and Broker agrees to use reasonable efforts to rent the Rental Unit(s).  
133 Broker's marketing may include use of a multiple listing service, Internet advertising, a lockbox system on the Rental Unit(s) and: \_\_\_\_\_

134 \_\_\_\_\_

135 \_\_\_\_\_ Broker may advertise the following  
136 incentives, repairs, build-outs, credits, etc. offered by Owner: \_\_\_\_\_

137 \_\_\_\_\_

138 Owner agrees that Broker may market other properties during the term of this Listing.

139 Broker may perform the following additional services: **COMPLETE AND CHECK AS APPLICABLE**

140  Solicit tenant applications

141  Qualify and approve prospective tenants

142  Negotiate Rental Agreements of the Rental Unit(s)

143  Receive on behalf of Owner: application fee(s), earnest money, security deposit(s) **STRIKE AS APPLICABLE**

144  Execute written Rental Agreements on behalf of Owner

145  Other: \_\_\_\_\_

146  Other: \_\_\_\_\_

147 **NOTE: This is not a property management agreement and this Listing does not obligate Broker to perform any property management**  
148 **duties, including maintenance, unless specified at lines 243-248 or in an addendum per line 249.**

149 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Tenant. Upon receipt of a written request  
150 from Owner or a broker who has listed the Rental Unit(s), Broker agrees to promptly deliver to Owner a written list of those tenants known by

151 Broker to whom the extension period applies. Should this Listing be terminated by Owner prior to the expiration of the term stated in this Listing,  
152 this Listing shall be extended for Protected Tenants, on the same terms, for one year after the Listing is terminated.

153 ■ **NOTICE ABOUT SEX OFFENDER REGISTRY:** You may obtain information about the sex offender registry and persons registered with the  
154 registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by telephone at (608)240-  
155 5830.

156 ■ **DEFINITIONS:**

157 **ADVERSE FACT:** "Adverse fact" means any of the following:

158 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 159 1) Significantly and adversely affecting the value of the Premises;  
160 2) significantly reducing the structural integrity of improvements to real estate; or  
161 3) presenting a significant health risk to occupants of the Premises.

162 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or  
163 agreement made concerning the transaction.

164 **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the event occurred and by  
165 counting subsequent calendar days.

166 **LEASE:** "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a  
167 definite period of time. A Lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the  
168 commencement and expiration can be ascertained by reference to some event, such as completion of a building. An agreement for transfer of  
169 possession of only personal property is not a Lease.

170 **MATERIAL ADVERSE FACT:** "Material adverse fact" means an adverse fact that a party indicates is of such significance, or that is generally  
171 recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter  
172 into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or  
173 agreement.

174 **PROTECTED TENANT:** "Protected tenant" means a tenant who personally, or through any person acting for such tenant, during the term of the  
175 Listing: 1) delivers to Owner or Broker a written rental proposal regarding a Rental Unit; 2) negotiates directly with Owner by discussing with  
176 Owner the potential terms upon which tenant might acquire a rental interest in a Rental Unit; or 3) attends an individual showing of a Rental Unit or  
177 discusses with Broker or cooperating brokers the potential terms upon which tenant might acquire a rental interest in a Rental Unit, but only if  
178 Broker delivers the tenant's name to Owner, in writing, no later than three days after the expiration of the Listing. The requirement in 3), to deliver  
179 the tenant's name to Owner in writing, may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the  
180 Listing, by the identification of the individuals in the Listing; or, b) if a tenant has requested that the tenant's identity remain confidential, by delivery  
181 of a written notice identifying the broker with whom the tenant negotiated and the date(s) of any showings or other negotiations. A tenant who  
182 becomes protected with respect to one Rental Unit included in this Listing shall be a Protected Tenant for all Rental Units included in this Listing.

183 **RENTAL AGREEMENT:** "Rental Agreement" means an oral or written agreement between a landlord and tenant, for the rental or Lease of a  
184 specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent. Rental Agreement  
185 includes a Lease. Rental Agreement does not include an agreement to enter into a Rental Agreement in the future.

186 ■ **NON-DISCRIMINATION:** Owner and Broker agree that they will not discriminate against any prospective tenant on account of race,  
187 color, sex, sexual orientation as defined in Wis. Stat. § 111.32 (13m), disability, religion, national origin, marital status, lawful source of  
188 income, age, ancestry, familial status or in any other unlawful manner.

189 **COOPERATION WITH MARKETING EFFORTS** During the term of this Listing, Owner agrees to:

- 190 (1) Allow Broker to show the Rental Unit(s) at reasonable times and with Owner providing notice to existing tenants as required by law;  
191 (2) Allow Broker to advertise, including placing signage upon the Premises; and  
192 (3) Cooperate with Broker in Broker's marketing efforts and immediately provide to Broker, in writing, the names of any prospective tenants  
193 known to Owner or who contact Owner, and their contact information.

194 **OWNER'S OBLIGATIONS** During the term of this Listing, Owner agrees to provide to Broker:

- 195 (1) Copies of all code violation orders and notices, information and reports regarding any lead-based paint on the Premises, and all other records  
196 and documents relating to conditions affecting the Premises; and  
197 (2) Any Owner-approved Rental Agreement, nonstandard rental provisions, addenda, rules and regulations and related forms and materials  
198 required in connection with the renting of the Rental Unit(s).

199 **OWNER'S WARRANTIES, COVENANTS AND REPRESENTATIONS** Owner represents any materials and information given to Broker by  
200 Owner are true and complete and that the Rental Agreement and other forms provided to Broker by Owner comply with all applicable laws. Owner  
201 agrees to hold Broker harmless from loss by reason of Broker's use of these materials, forms and information pursuant to the terms of this Listing,  
202 including the payment of reasonable attorney's fees in the event of any suit against Broker arising out of the use of these materials, forms and  
203 information.

204 Owner warrants and represents to Broker that:

- 205 (1) Owner has no notice or knowledge of any of the following conditions affecting the Premises unless indicated at lines 243-248 or in an  
206 attached addendum per line 249, or disclosed in the documentation Owner has provided to Broker:  
207 (a) Uncorrected code violations as described in Wis. Stat. § 704.07(2)(bm);  
208 (b) A lack of hot or cold running water;  
209 (c) Plumbing or sewage disposal facilities that are not in good operating condition;

- 210 (d) Heating facilities serving any rental unit that are not in safe operating condition, or are not capable of maintaining a
- 211 temperature, measured in occupied areas at the approximate center of the room, midway between floor and ceiling, of **not less**
- 212 **than** 67° F (19° C) during all seasons of the year that the rental unit is occupied;
- 213 (e) A lack of electrical service, or electrical wiring, outlets, fixtures or other components of the electrical system that are not in safe
- 214 operating condition;
- 215 (f) Any structural or other conditions in the Premises which constitute a substantial hazard to the health or safety of the tenant(s),
- 216 or create an unreasonable risk of personal injury as a result of any reasonably foreseeable use of the Premises other than
- 217 negligent use or abuse of the Premises by tenant(s);
- 218 (2) Other conditions or occurrences which would significantly reduce the value of the rental interest to a reasonable person with knowledge
- 219 of the nature and scope of the condition or occurrence. Owner has made no rent concessions or other agreements affecting the Rental
- 220 Unit(s).
- 221 (3) Owner agrees to make the following repairs and build-outs to the Premises: \_\_\_\_\_

222 \_\_\_\_\_

223 \_\_\_\_\_ **STRIKE AND COMPLETE AS APPLICABLE**

224 Exceptions to representations stated in lines **221-223**: \_\_\_\_\_

225 \_\_\_\_\_

226 \_\_\_\_\_

227 Owner agrees to promptly inform Broker, in writing, of any information that would modify the above representations during the term of this Listing.

228 **WARNING: IF OWNER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, OWNER MAY BE LIABLE FOR DAMAGES AND**

229 **COSTS.**

230 ■ **TERMINATION OF LISTING:** Neither Owner nor Broker has the legal right to unilaterally terminate this Listing absent a material breach of

231 contract by the other party. Owner understands that the parties to the Listing are Owner and the Broker (firm). Agents (salespersons) for Broker

232 (firm) do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of

233 this Listing, without the written consent of the agent(s)' supervising broker. Owner and Broker agree that any termination of this Listing by either

234 party before the date stated on line **257** shall be indicated to the other Party in writing and shall not be effective until delivered to the other Party in

235 accordance with lines **22-39**.

236 **CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating Party to potentially be liable for**

237 **damages. The Parties agree that this Listing shall terminate upon an effective change in ownership or control of the Rental Unit(s) so**

238 **affected, but in no event shall this Listing terminate as to the remainder of the Rental Unit(s).**

239 **TERMINATION FEE PER RENTAL UNIT** If this Listing is terminated as to one or more of the Rental Unit(s) because of an effective change in

240 ownership or control of the Rental Unit(s), Owner agrees to pay Broker a termination fee in the amount of \_\_\_\_\_

241 \_\_\_\_\_

242 \_\_\_\_\_ (insert dollar amount, formula, etc.) per Rental Unit terminated.

243 **ADDITIONAL PROVISIONS** \_\_\_\_\_

244 \_\_\_\_\_

245 \_\_\_\_\_

246 \_\_\_\_\_

247 \_\_\_\_\_

248 \_\_\_\_\_

249 **ADDENDA** The attached \_\_\_\_\_ is/are made part of this Listing.

250 **CAUTION: IF SIGNED, THIS LISTING CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BROKERS MAY PROVIDE A GENERAL**

251 **EXPLANATION OF THE PROVISIONS OF THIS LISTING OR OTHER REAL ESTATE CONTRACTS, BUT ARE PROHIBITED BY LAW FROM**

252 **GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS LISTING OR ANY OTHER REAL ESTATE CONTRACT.**

253 **AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED. OWNER SHOULD CONSULT OTHER EXPERTS AS**

254 **APPROPRIATE, FOR EXAMPLE, APPRAISERS, TAX ADVISORS, OR INSPECTORS IF SERVICES BEYOND BROKER'S MARKETING**

255 **SERVICES ARE REQUIRED.**

256 ■ **TERM OF THE CONTRACT:** From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, up to and including

257 midnight of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. In the event a commission is earned for a

258 Rental Unit, this Listing (shall) (shall not) **STRIKE ONE** ("shall" if neither is stricken) terminate for that Rental Unit.

259 ■ **READING/RECEIPT: BY SIGNING BELOW, OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS LISTING CONTRACT AND THAT**

260 **HE/SHE HAS READ ALL 5 PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

261 Owner Entity Name (if any): \_\_\_\_\_

262 (x) \_\_\_\_\_

263 Owner's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

264 (x) \_\_\_\_\_

265 Owner's/Authorized Signature ▲ Print Name/Title Here ► \_\_\_\_\_ Date ▲ \_\_\_\_\_

266 (x) \_\_\_\_\_

267 Agent for Broker ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Broker/Firm Name ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_

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## REVISIONS TO WB-6 Business Listing Contract – Exclusive Right to Sell

To: DSPS Real Estate Contractual Forms Advisory Committee

From: WRA Forms Committee

Date: January 4, 2013

RE: **WB-6 Business Listing Contract – Exclusive Right to Sell**

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The starting point for this discussion is the 2001 WB-6 Business Listing Contract – Exclusive Right to Sell. This memo is based on the draft of the DSPS Real Estate Contractual Forms Advisory Committee that is labeled WB-06 Form 20121204 (With Tracking) Use Me. In that draft, all changes that were in tracking that the DSPS Committee accepted, as well as additional changes that the DSPS Committee made, are accepted and shown without tracking in this draft. The sections highlighted in yellow or shown in tracking are sections of the form that the DSPS committee did not yet discuss or areas they wanted to take a further look at.

Many of the changes made are intended to “modernize” the WB-6 and make it more similar to the WB-5 Commercial Listing Contract (and the other updated WB listing contracts) by including the same standard listing provisions that appear in the WB-5 in the draft, to the extent possible.

### WB-6 Changes

The draft attempts to capture a sample lay-out and flow of an updated business listing incorporating language from the 2008 WB-1 Residential Listing Contract- Exclusive Right to Sell and the WB-5 Commercial Listing Contract – Exclusive Right to Sell and proposing other modifications.

With respect to the WB-6, please consider the following:

- ◆ Interest in Real Estate: At the very end of line 26 there should be a colon (:) after the word “other.”
- ◆ Commission: Going forward we should consider whether we believe there should be two business offer to purchase forms – one if real estate is included and one when it is not (that is what we have now)? The plan is going to be to work through the WB-16 Offer to Purchase - Business with Real Estate and then assess whether it makes sense/is necessary to also have a WB-17 Offer to Purchase - Business without Real Estate.

The DSPS Committee agreed with the inclusion of a definition of the term “purchase price” to include all consideration received by the seller including buyer assumptions of debt. See lines 91-92. An additional suggestion was made to also add language making it clear that the full commission is due even when there is seller financing. For instance, “Purchase price” shall include all consideration received by Seller including buyer assumptions of debt; and shall include all seller financing.

### NEW MATERIAL:

On line 82 the DSPS Committee added an additional commission event: “Seller transfers or sells any stock, shares, membership or partnership interest of the Business.” This is intended to capture those situations where the decision was made to sell the ownership in the Business Entity rather than selling the Assets. This addition is meant to help ensure that a broker participating in such a transaction is still paid commission even though the ultimate sale morphed into the sale of the entity instead of the Business. On line 89 there is an adjustment shown in tracking that indicates that if the ownership of the entity is transferred or sold that the commission would be based upon the list price – is that appropriate? The following small modifications may also be helpful:

5) "Seller transfers or sells any stock, shares, or membership, ~~or~~ partnership or other ownership interest of the Business."

One related question then is how do you compute the commission? Under the current draft a percentage commission would be calculated based on the list price, while the WRA Committee suggested that this be based on the purchase price. If there is agreement then lines 88-89 would need to be modified:

A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1), ~~or~~ 2) or 5) above, or calculated based on the list price under 3) (if an exchange of all Assets), 4), ~~5),~~ 6) or 7).

One question here is who is the seller? If the seller started out as the Business Entity and it is decided that instead of the Business Entity selling assets that instead the owners of the Business Entity are going to sell their ownership interests in the Business Entity. So the seller was the Business Entity but then the owners of that entity sell their interests. Does the language in item 5) really cover that? Would this be better to say:

**5) A sale, conveyance or transaction occurs which causes an effective change of ownership or control of all or any part of the Seller (or the Business Entity?) to a third party purchaser, other than in the ordinary course of business**

\*\*\*\*\*

**THIS IS AS FAR AS THE DSPS COMMITTEE WENT, leaving the Commission area highlighted to look at it again (some more), otherwise the next section to look at is Seller's Responsibilities.**

\*\*\*\*\*

◆ Seller's Responsibilities/Open House and Showing Responsibilities: IN **YELLOW**. The WRA Committee proposed to combine the Seller's Responsibilities section from the current WB-6 with the similar Open House and Showing Responsibilities section from the WB-5, as follows:

■ SELLER'S RESPONSIBILITIES: Seller agrees to hold Broker harmless as to any losses suffered by Broker because of any breach of contract by Seller where Broker has acted as agent for Seller according to terms and conditions set forth in this Listing, including the payment of reasonable attorney fees required to defend Broker from claims by a buyer of the Assets. Seller is aware that there is a potential risk of injury, damage or theft involving persons attending a showing of real the Property Assets. Seller ~~agrees to accept~~s responsibility for preparing the real Assets Property to minimize the likelihood of injury, damage or loss of personal property located on the real Assets Property. Seller agrees to hold Broker harmless for any losses or liability resulting from personal injury, property damage or theft occurring during showings other than those caused by Broker's negligence or intentional wrongdoing. ■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** ~~Seller is aware that there is a potential risk of injury, damage and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to hold Broker harmless for any losses or liability resulting from personal injury, property damage, or theft occurring during "individual showings" or "open houses" other than those caused by Broker's negligence or intentional wrongdoing.~~ Seller acknowledges that individual showings and open houses may be conducted by licensees other than Broker, that appraisers and inspectors may conduct appraisals and inspections without being accompanied by Broker or other licensees, and that buyers or licensees may be present at all inspections and testing and may photograph or videotape the Assets Property unless otherwise provided for in additional provisions at lines xxx-xxx or in an addendum per lines xxx-xxx.

See the language highlighted in **yellow** above: should this be restated? "of injury, damage or loss of personal property located on the real Property."

◆ Termination of Listing: Add the additional language appearing in the WB-5 regarding the need to have listing terminations in writing; the first few sentences are the same in both listings.

■ **TERMINATION OF LISTING**: Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent a material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Broker (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)' supervising broker. Seller and Broker agree that any termination of this Listing by either party before the date stated on line xxx shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in accordance with lines xxx-xxx. CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating party to potentially be liable for damages.

◆ Earnest Money: Adjust the verbiage to match the language from the WB-5:

■ **EARNEST MONEY**: If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money, Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement agreement signed by or on behalf of all parties having an interest in the trust funds. If the transaction fails to close and the earnest money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to Broker shall not terminate this Listing.

When looking at this it almost sounds as if the only way the broker can disburse the earnest money is per the closing statement or some other written earnest money disbursement agreement. Is there a need to have the seller provide a specific authorization to disburse when there is a list of authorizations in Wis. Admin. Code § REEB 18.09(1), several of which are also listed in the offers? The written earnest money disbursement agreement is one of the seven safe harbor disbursement authorizations appearing in § REEB 18.09(1). Either the sentence highlighted in yellow above could be removed, or a different sentence could be fashioned that is broader. For example, “Should Broker hold the earnest money, Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement agreement signed by or on behalf of all parties having an interest in the trust funds in accordance with the offer to purchase and Wis. Admin. Code § REEB 18.09.”

The WRA Committee recommends that the statement highlighted in yellow above be removed.

◆ Non-Discrimination: change the Discrimination section in the existing WB-6 to resemble the WB-5 language, as follows (this is the same as what is now in the WB-37 rental listing):

■ **NON-DISCRIMINATION**: Seller and Broker agree that they will not discriminate against any prospective buyer on account of race, color, sex, sexual orientation as defined in Wis. Stat. § 111.32(13m), disability, religion, national origin, marital status, lawful source of income, age, ancestry, familial status or in any other unlawful manner.

◆ Agency Disclosure Provisions: The Broker Disclosure to Clients language has been inserted and is highlighted in yellow. This is the same as the language in the other listing contracts and it is mandatory down to the Confidentiality section which is not required but is in the other agency contracts.

Remove the yellow highlighting if this is acceptable.

- ◆ Definitions – NEW to the WB-6: the definitions of Adverse Fact, Deadlines – Days, and Material Adverse Fact are added from the WB-5. Remove tracking if these are acceptable.

ADVERSE FACT: An "Adverse Fact" means any of the following:

- (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:
  - 1) Significantly and adversely affecting the value of the Property;
  - 2) significantly reducing the structural integrity of improvements to real estate;  
or
  - 3) presenting a significant health risk to occupants of the Property.
- (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

DEADLINES – DAYS: Deadlines expressed as a number of "days" from an event are calculated by excluding the day the event occurred and by counting subsequent calendar days.

MATERIAL ADVERSE FACT: A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the terms of such a contract or agreement.

- ◆ Definition of Business Personal Property: This is the same as is the existing WB-6. The business practitioners wanted to make sure that intellectual property was included, such as trademarks, trade names, patents, copyrights, web site addresses, licenses, etc. but did not believe it was necessary to add "intellectual property" to this definition to ensure that this is covered.

Since the list price includes trade fixtures, Fixtures and Business Personal Property, and Business Personal Property includes trade fixtures, should a caution or reminder be added to this definition saying

**CAUTION: Exclude on lines 29-32 Business Personal Property not owned by Seller such as rented personal property and tenant's trade fixtures.**

- ◆ Existing WB-6, Definition of Conditions Affecting the Business, Included Property or the Transaction: this was lined out in tracking because it was removed from the other listings. These or similar conditions may come into play in the offer, but not in the listing stage in the other updated listing contracts (except some conditions may be covered in the seller disclosure report, if any, if the Assets include Property). Please delete if the Committee agrees this is not needed here.

- ◆ Definition of Fixtures: the 2001 WB-6 language is replaced with the language from the WB-5. Remove the tracking if this is acceptable.

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

on permanent foundations and docks/piers on permanent foundations. A Fixture does not include trade fixtures owned by tenants of the ~~Property~~ **Real Estate**. **CAUTION: Exclude Fixtures not owned by Seller such as rented Fixtures and tenant's trade fixtures.**

It is suggested to remove the reference to trade fixtures here since the definition says that Fixtures does not include tenants' trade fixtures. Also the terminology in the WB-6 draft uses the term Real Estate in place of Property.

Should there be a note in the Not Included in List Price section on page 1 of the WB-6 reminding the seller to exclude tenants' trade fixtures? Should the CAUTIONS above in this memo for the Fixtures and Business Personal Property definitions be moved to or repeated in the section on lines 29-32?

◆ Existing WB-6, Definition of Included Property: This is was lined out in tracking because it can be removed due to modified terminology using the term "Assets" to include all property included in the list price and "Real Estate" to refer to any real estate included in the listing. Please remove tracking if this is acceptable.

◆ Definition of Person Acting on Behalf of Buyer (based on the WB-36 definition) NEW to the WB-6: there have been reports of instances where an individual looks at a property, maybe attends a showing, discusses terms or even writes an offer. Then the person forms an LLC or another entity and writes an offer and the seller uses this to evade paying commission under the listing protection/protected buyer provisions. The language of "any person acting for such buyer" found within the definition of Protected Buyer has been found to not always hold up. For instance, it is difficult to argue that the individual was acting for the ultimate LLC or corporate buyer when the entity was not even in existence at the time of the original buyer contact (although the plans for such may have been contemplated by the person). There has been some conversation that the definition of Person Acting on Behalf of Buyer from the WB-36 Buyer Agency/Tenant Representation Agreement should be used as the basis for a provision helping ensure that the seller cannot avoid commission in such instances.

Below is that provision (it is also in the WB-6 draft in tracking mode) with some preliminary modifications for discussion purposes. This definition is referenced in the Protected Buyer definition in the draft. Try to look at it as if the preliminary actions were by a person who later formed an entity and vice versa.

**THE QUESTION:** If the ultimate buyer was an LLC and the person with the preliminary contact was an individual who later forms the LLC, does this language cover this?

■ **PERSON ACTING ON BEHALF OF BUYER:** In this Agreement "Person **A**cting on **B**ehalf of Buyer" shall mean any person joined in interest with buyer, or otherwise acting on behalf of buyer, including but not limited to, buyer's immediate family, agents, servants, employees, **directors, managers, members, officers, owners, partners, incorporators, and organizers**, as well as any and all corporations, partnerships, limited liability companies or other entities controlled by, affiliated with or owned by the buyer in whole or in part.

◆ Definition of Procure: Replace with WB-5 language:

**PROCURE:** A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer submitting the written offer has the ability to complete the buyer's obligations under the written offer. (See lines xx-xx)

◆ Definition of Protected Buyer: Replace with language substantially the same as the WB-5. The modifications are shown in the draft in tracking. It includes the Person Acting on Behalf of Buyer terminology for purposes of illustration and discussion.

PROTECTED BUYER: Means a buyer who personally, or through any Person Acting on Behalf of Buyer ~~person acting for such buyer, during the term of this Listing~~: 1) delivers to Seller or Broker a written offer to purchase, exchange or option on the ~~Business or included property~~ Assets during the term of this Listing; 2) negotiates directly with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the ~~Business or included~~ Assets; or 3) attends an individual showing of the ~~Business or included~~ Assets or discusses with Broker or cooperating brokers the potential terms upon which buyer might acquire an interest in the ~~Business or included~~ Assets, but only if Broker delivers the buyer's name to Seller, in writing, no later than three days after the expiration of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing, may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the identification of the individuals in the Listing; or b) if a buyer has requested that the buyer's identity remain confidential, by delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s) of any showings or other negotiations.

With the language in this provision referring to a buyer who personally acts or acts through any Person Acting on Behalf of Buyer, does this yet solve the problem with the individual who sees the Assets and later forms an LLC to be the buyer so that the seller does not owe commission – and can therefore accept a lesser purchase price. The Protected Buyer provision requires in some circumstances that the buyer be named – how do you provide the name of an LLC that the individual has yet to create? Or can this aspect of the problem not be fixed in these contract provisions? **OTHER SUGGESTIONS OR IDEAS??**

◆ Notice about Sex Offender Registry: Added from the WB-5 for consistency and to make sure everyone is covered in all circumstances.

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

◆ Existing WB-6, Real Property Included in List Price: The draft proposes to change this to say REAL ESTATE PROVISIONS with a note below saying “LINES –XXX-XXX ARE A PART OF THIS LISTING ONLY IF REAL ESTATE IS INCLUDED IN THE LIST PRICE”

The Existing WB-6 had included the description of any real estate included in the list price here – this has been modified and moved to the first page of the draft.

The Occupancy Date and Occupancy Charge items in the Existing WB-6 have been replaced in the draft with the language of the WB-5 regarding Occupancy as shown below and in the draft. The WRA Committee recommends that the broom swept reference be removed (highlighted in yellow).

■ **OCCUPANCY**: Unless otherwise provided, Seller agrees to give buyer occupancy of the Real Estate at time of closing and to have the Real Estate **in broom swept condition** and free of all debris and personal property except for personal property belonging to current tenants, sold to buyer or left with buyer's consent.

The Condition of Title, Title Evidence and Inspections items in the Existing WB-6 were removed because similar provisions were removed from the other WB listings. Representations regarding property condition and title matters no longer are part of the process at the listing stage, at least per the approved WB listing contracts.

◆ Seller's Disclosure Report: Modify the provision to that is has the same content as the WB-5 language, with additional changes shown below in tracking:

■ **SELLER'S DISCLOSURE REPORT:** ~~Wisconsin~~ Wis. Administrative Admin. Code Chapter ~~RL~~EEB 24 requires listing brokers to make inquiries of the seller on the condition of the ~~real-real estate~~property and to request that the seller provide a written response to broker's inquiry. If the Assets include Real Estate, Seller agrees to complete ~~the a~~ seller's disclosure report ~~provided by Broker~~ to the best of Seller's ~~ability~~knowledge. Seller agrees to amend the report should Seller learn of any defect(s) (as defined in the report) after completion of the report, but before acceptance of a buyer's offer to purchase. Seller authorizes Broker to distribute the report to all interested parties and their agents inquiring about the ~~Property~~ Assets and acknowledges that Broker has a duty to disclose all material adverse facts as required by law.

The WRA Committee recommends that this provision be modified to indicate that there may also be business disclosures and that different property types may require different types of property condition reports. There may be more than one disclosure report and the seller should agree to update the reports if there are changes in conditions before an offer is accepted. One possibility:

■ **SELLER'S DISCLOSURE REPORT:** ~~Wisconsin~~ Wis. Administrative Admin. Code Chapter ~~RL~~EEB 24 requires listing brokers to make inquiries of the seller on the condition of the ~~real-real estate~~property and to request that the seller provide a written response to broker's inquiry. If the Assets include Real Estate, Seller agrees to complete ~~the a~~ seller's disclosure report ~~provided by Broker~~ to the best of Seller's ~~ability~~knowledge. If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. § 709.03 may be required. If the Property does not include any buildings, a Vacant Land Disclosure Report containing the disclosures provided in Wis. Stat. § 709.033 may be required. A commercial disclosure report for commercial Real Estate may be needed as well as business disclosures regarding the Business. More than one report may be necessary. Seller agrees to amend the report(s) should Seller learn of any defect(s) (as defined in the reports) after completion of the report(s), but before acceptance of a buyer's offer to purchase. Seller authorizes Broker to distribute the report(s) to all interested parties and their agents inquiring about the ~~Property~~ Assets and acknowledges that Broker has a duty to disclose all material adverse facts as required by law.

◆ Current WB-6, lines 17-22, Seller Representations Regarding Business, Included Property and the Transaction: Not sure what should be done here. One suggestion is the following language modified from the WB-5. The WB-6 provision from the first page of the 2001 form is removed and the following is substituted. This proposal has an added proposed representation with regard to business disclosures regarding the Business and the Assets (such reports are often created by the business brokerage or legal counsel).

■ **SELLER REPRESENTATIONS REGARDING REAL ESTATE AND BUSINESS ASSETS DEFECTS:** Seller represents to Broker that as of the date of this Listing, if the Assets include Real Estate and if a seller's disclosure report(s) or other form of written response to Broker's inquiry regarding the condition of the ~~Property~~ Real Estate has been ~~made~~ completed by the Seller, the Seller has no notice or knowledge of any defects (as defined in the report) affecting the ~~Property~~ Real Estate other than those noted on Seller's disclosure report(s) or written responses. Seller additionally represents to Broker that as of the date of this Listing, if seller's business disclosure report(s) or other form of written responses to Broker's inquiry regarding the Business or Assets has been completed by the Seller, the Seller has no notice or knowledge of any defects (as defined in the report) affecting the Business or Assets other than those noted on Seller's disclosure report(s) or written responses.

**WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR DAMAGES AND COSTS.**

Some of the issues are that there are no seller disclosure forms regarding business assets or business real estate per se (although the WRA condition report for commercial properties may be used in some of these transactions). The suggested provision has been placed in the draft directly following the section regarding the Seller's Disclosure Report.

◆ Leased Property: Delete the language in the 2001 WB-6 and instead use the following language modified from the WB-5:

■ **LEASED PROPERTY**: If the Property Real Estate included in the list price is currently leased to third parties and lease(s) will extend beyond closing, Seller shall assign Seller's rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed-upon prorations) thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by tenants. CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the lease(s) unless released by tenants.

The WRA Committee suggests that a reference to this section be inserted on page 1 of the WB-6 draft. For instance, it might state at the end of line 25: "See lines xxx-xxx regarding Leased Property." **OTHER IDEAS OR SUGGESTIONS?**

◆ Term of the Contract: Replace with WB-5 language:

■ **TERM OF THE CONTRACT**: From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, up to and including midnight of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

◆ **CAUTION**: The draft has the original WB-6 language. Should this be replaced with WB-5 language or is the existing language appropriate, even though it is somewhat duplicative? WB-5 language is:

■ **READING/RECEIPT: BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS LISTING CONTRACT AND THAT HE/SHE HAS READ ALL FIVE x PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

The WRA Committee suggests that there be a combination of the two that might say, for instance:

**CAUTION: IF SIGNED, THIS LISTING CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. A LISTING FOR LEASE ALSO MUST BE ENTERED INTO IF BROKER IS TO BE AUTHORIZED TO PROCURE TENANTS. BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS LISTING CONTRACT AND THAT HE/SHE HAS READ ALL FIVE x PAGES AS WELL AS ANY ADDENDA AND ANY OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

◆ Existing WB-6, Dated line: removed from the draft because the parties each date on their respective signature lines. Remove tracking if this is acceptable.

◆ Signature lines: The draft inserts the broker and seller signature and contact information lines from the WB-5, augmented with the entity signature lines from the WB-15 commercial offer and then modified to essentially match the signature section of the WB-37 rental listing. The business practitioners on this Committee wanted to add a second entity signature block, and two lines for each block where an individual may sign

personally – a proposal for this appears below and in the draft, highlighted in aqua. They indicated they wanted to be able to have an entity as well as responsible individuals sign so that the broker can pursue the individual(s) if the entity ends up bankrupt or without collectible assets. The business practitioners also suggested that language similar to the following be added before the signature lines:

All persons signing below on behalf of a Seller Entity represent that they have proper legal authority to sign for and bind the Entity.

Seller Entity Name (if any): \_\_\_\_\_

(x) \_\_\_\_\_  
 Authorized Signature ▲ Print Name & Title Here ► Date ▲

(x) \_\_\_\_\_  
 Authorized Signature ▲ Print Name & Title Here ► Date ▲

(x) \_\_\_\_\_  
 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

(x) \_\_\_\_\_  
 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

Seller Entity Name (if any): \_\_\_\_\_

(x) \_\_\_\_\_  
 Authorized Signature ▲ Print Name & Title Here ► Date ▲

(x) \_\_\_\_\_  
 Authorized Signature ▲ Print Name & Title Here ► Date ▲

(x) \_\_\_\_\_  
 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

(x) \_\_\_\_\_  
 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

(x) \_\_\_\_\_  
 Agent for Broker ▲ Print Name Here: ► Broker/Firm Name ▲ Date ▲

**OTHER COMMENTS OR SUGGESTIONS?**

◆ Attorney Fees Provision: one business practitioner suggested via email that there an attorney's fees provision should be added, such as "In the event either party hereto shall commence legal proceedings against the other to enforce the terms hereof, or to declare rights hereunder, as a result of a breach of any covenant or condition of this Contract, the prevailing party in any such proceeding shall be entitled to recover from the losing party its costs of suit, including reasonable attorneys fees, as may be fixed by the court." That practitioner recalled that there used to be attorney fees provisions in many of the listing years ago. Note that this provision was removed from the other listing contracts when they were updated in 2008-2009. The WRA Committee suggests that this be left out of the WB-6 and allow the parties to include it in an addendum if desired.

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WB-06 WordWB-1 changes

**WB-6 BUSINESS LISTING CONTRACT – EXCLUSIVE RIGHT TO SELL**

**LISTING CONTRACT FOR SALE OF ASSETS ONLY.**

**CONSULT APPROPRIATE ADVISORS FOR TAX, LICENSING, LIABILITY OR RELATED ISSUES.**

1 SELLER GIVES BROKER THE EXCLUSIVE RIGHT TO SELL THE ASSETS ON THE FOLLOWING TERMS:

2 Business Name: \_\_\_\_\_  
3 Type of Business Entity (e.g., corporation, LLC, partnership, sole proprietorship, etc.): \_\_\_\_\_  
4 Business Description: \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_ (Lines 2-7 hereinafter referred to as the "Business")

8 Insert additional description, if any, at lines xxx-xxx or attach as an addendum per line xxx.

9 ■ **LIST PRICE:** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

10 ■ **INCLUDED IN LIST PRICE:** Seller shall include in the list price (unless excluded at lines xx-xx) and transfer, free and clear of encumbrances,  
11 the Assets of the Business including all goodwill, stock-in-trade, trade fixtures, Fixtures (if interest in Real Estate is included), accounts receivable,  
12 all Business Personal Property, the interest in Real Estate (if included on lines xx-xx), and the following additional property:  
13 \_\_\_\_\_

14 [~~STRIKE AND COMPLETE AS APPLICABLE~~] (hereinafter collectively the "Assets").

15 Seller shall convey Business Personal Property and any other personal property by Bill of Sale or  
16 \_\_\_\_\_, free and clear of all liens and encumbrances except  
17 \_\_\_\_\_.

18 ■ **INTEREST IN REAL ESTATE [CHECK BOX ON LINE XX OR XX, AS APPLICABLE]:**

19  **NO INTEREST IN REAL ESTATE INCLUDED IN LIST PRICE**

20  **DESCRIPTION OF INTEREST IN REAL ESTATE INCLUDED IN LIST PRICE:**

21 Street address is: \_\_\_\_\_  
22 in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_,  
23 Wisconsin (the "Real Estate").

24 The Real Estate is owned by: \_\_\_\_\_.

25 The Real Estate is leased to: \_\_\_\_\_.

26 The interest in the Real Estate included in the list price is:  ownership  leasehold  assignment of existing lease  other  
27 \_\_\_\_\_ . Insert any additional description, including further description  
28 of the type of interest in the Real Estate that is included in list price, at lines xxx-xxx or attach as an addendum per line xxx.

29 ■ **NOT INCLUDED IN LIST PRICE: CAUTION:** If Real Estate is included, identify any Fixtures to be excluded by Seller or which are rented  
30 and will continue to be owned by lessor (see lines xxx-xxx):  
31 \_\_\_\_\_  
32 \_\_\_\_\_.

33 ■ **MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to procure a buyer for the Assets. Broker's marketing  
34 may \_\_\_\_\_ include:  
35 \_\_\_\_\_  
36 \_\_\_\_\_.

37 Broker may advertise the following special financing and incentives offered by Seller: \_\_\_\_\_  
38 \_\_\_\_\_.

39 Seller has a duty to cooperate with Broker's marketing efforts. See lines xx-xx regarding Broker's role as marketing agent and Seller's  
40 duty to notify Broker of any potential buyers known to Seller. Seller agrees that Broker may market other assets and properties during  
41 the term of this Listing.

42 ■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work and cooperate  
43 with other brokers in marketing the Assets, including brokers from other firms acting as subagents (agents from other companies  
44 engaged by Broker - See lines xxx-xxx) and brokers representing buyers. Cooperation includes providing access to the Assets for  
45 showing purposes and presenting offers and other proposals from these brokers to Seller. Note any brokers with whom Broker shall not  
46 cooperate, any brokers or buyers who shall not be allowed to attend showings, and the specific terms of offers which should not be  
47 submitted to Seller: \_\_\_\_\_.

48 CAUTION: Limiting Broker's cooperation with other brokers may reduce the marketability of the Assets.

49 ■ **EXCLUSIONS:** All persons who may acquire an interest in the Assets as a Protected Buyer under a prior listing contract are  
50 excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing. Within seven days of the  
51 date of this Listing, Seller agrees to deliver to Broker a written list of all such prospective buyers. The following other buyers are  
52 excluded from this Listing until \_\_\_\_\_ [INSERT DATE]: \_\_\_\_\_

53 \_\_\_\_\_ . These other buyers are no longer excluded from this Listing after the specified date unless,  
54 on or before the specified date, Seller has either accepted an offer from the buyer or sold the Assets to the buyer.

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

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

59 Seller's recipient for delivery (optional): \_\_\_\_\_

60 Broker's recipient for delivery (optional): \_\_\_\_\_

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

62 Seller: (\_\_\_\_\_) \_\_\_\_\_ Broker: (\_\_\_\_\_) \_\_\_\_\_

63 (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a commercial delivery  
64 service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery  
65 address at line xx or xx.

66 (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  
67 recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx or xx.

68 Delivery address for Seller: \_\_\_\_\_

69 Delivery address for Broker: \_\_\_\_\_

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

74 E-Mail address for Seller: \_\_\_\_\_

75 E-Mail address for Broker: \_\_\_\_\_

76 ■ **COMMISSION**: Broker's commission shall be \_\_\_\_\_.

77 Seller shall pay Broker's commission, which shall be earned if, during the term of this Listing:

78 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Assets;

79 2) Seller grants an option to purchase all or any part of the Assets which is subsequently exercised;

80 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Assets;

81 4) A transaction occurs which causes an effective change of ownership or control of all or any part of the Assets from Seller to a third party, other  
82 than in the ordinary course of business;

83 5) Seller transfers or sells any stock, shares, membership or partnership interest of the Business;

84 6) A buyer is Procured for the Assets by Broker, by Seller, or by any other person, at no less than the price and on substantially the terms set forth  
85 in this Listing and the standard provisions of the current WB-16 OFFER TO PURCHASE - BUSINESS WITH REAL ESTATE (if real property is  
86 included in the list price) or WB-17 OFFER TO PURCHASE - BUSINESS WITHOUT REAL ESTATE, which is/are incorporated by reference into  
87 this Listing, even if Seller does not accept this buyer's offer.

88 7) Seller enters into a management contract involving all or any part of the Assets during the term of this Listing.

89 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1) or 2) above,  
90 or calculated based on the list price under 3) (if an exchange of all Assets), 4), 5) or 6). A percentage commission shall be calculated on the fair  
91 market value of the Assets exchanged under 3) if the exchange does not involve all Assets, or on the fair market value of the Assets to which an  
92 effective change in ownership or control takes place under 4) if the transaction does not involve all Assets. "Purchase price" shall include all  
93 consideration received by Seller including buyer assumptions of debt. Once earned, Broker's commission is due and payable in full at the earlier  
94 of closing or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of the Listing, one  
95 owner of the Assets sells, conveys, exchanges or options an interest in all or any part of the Assets to another owner, except by divorce judgment.

96 NOTE: A sale, option, exchange or Procurement of a buyer for a portion of the Assets does not terminate the Listing as to any remaining Assets.

97 **NOTICE**: Broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker lien for commissions or compensation  
98 earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, if any, that is the subject  
99 of this Listing. "Commercial real estate" includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real  
100 property that is zoned for residential purposes and that does not contain any buildings or structures, and (c) real property that is zoned  
101 for agricultural purposes.

102 ■ **COMPENSATION TO OTHERS**: Broker offers the following commission to cooperating brokers: \_\_\_\_\_

103 \_\_\_\_\_ . (Exceptions if any): \_\_\_\_\_ .

104 ■ **EXTENSION OF LISTING**: The Listing term is extended for a period of one year as to any Protected Buyer. Upon receipt of a  
105 written request from Seller or a broker who has listed the Assets, Broker agrees to promptly deliver to Seller a written list of those  
106 buyers known by Broker to whom the extension period applies. Should this Listing be terminated by Seller prior to the expiration  
107 of the term stated in this Listing, this Listing shall be extended for Protected Buyers, on the same terms, for one year after the  
108 Listing is terminated.

109 ■ **SELLER COOPERATION WITH MARKETING EFFORTS**: Seller agrees to cooperate with Broker in Broker's marketing efforts and to  
110 provide Broker with all records, documents and other material in Seller's possession or control which are required in connection with the sale.  
111 Seller authorizes Broker to do those acts reasonably necessary to effect a sale and Seller agrees to cooperate fully with these efforts which may  
112 include Internet advertising or a lockbox system on the Real Estate. Seller shall promptly notify Broker in writing of the names and contact

113 information of any potential buyers known to Seller, who contact Seller or with whom Seller negotiates during the term of this Listing and shall  
114 promptly refer all such potential buyers and all persons making inquiries concerning the Assets to Broker.

115 ■ **SELLER AUTHORITY TO SELL:** Seller represents that Seller has authority to convey the Assets. If the owner is an entity, Seller  
116 agrees, within ten days of the execution of this Listing, to provide Broker with a copy of documents evidencing that the sale of the Assets  
117 has been properly authorized.

118 ■ **DOCUMENTS AND RECORDS:** Seller agrees to promptly deliver all financial, business or other records, documents or other materials  
119 related to the Assets or transaction required in connection with the marketing or sale. **Seller warrants that all written documents and records**  
120 **given to Broker in conjunction with the marketing or sale of the Assets shall be true and accurate.** Seller agrees to hold Broker harmless  
121 from loss by reason of Broker's use of these documents and records, including the payment of reasonable attorney fees in the event of any suit  
122 against Broker arising out of the use of these documents and records. Seller authorizes Broker to distribute any or all of the documents and  
123 records given to Broker to prospective buyers and their business, legal or tax counsel.

124 ■ **SELLER'S RESPONSIBILITIES:** Seller agrees to hold Broker harmless as to any losses suffered by Broker because of any breach  
125 of contract by Seller where Broker has acted as agent for Seller according to terms and conditions set forth in this Listing, including the  
126 payment of reasonable attorney fees required to defend Broker from claims by a buyer of the Assets. Seller is aware that there is a  
127 potential risk of injury, damage or theft involving persons attending a showing of real the Property Assets. Seller agrees to accept  
128 responsibility for preparing the real Assets Property to minimize the likelihood of injury, damage or loss of personal property located on  
129 the real Assets Property. Seller agrees to hold Broker harmless for any losses or liability resulting from personal injury, property damage  
130 or theft occurring during showings other than those caused by Broker's negligence or intentional wrongdoing. Seller acknowledges that  
131 individual showings and open houses may be conducted by licensees other than Broker, that appraisers and inspectors may conduct  
132 appraisals and inspections without being accompanied by Broker or other licensees, and that buyers or licensees may be present at all  
133 inspections and testing and may photograph or videotape the Assets Property unless otherwise provided for in additional provisions at  
134 lines xxx-xxx or in an addendum per lines xxx-xxx.

135 ■ ~~SELLER'S RESPONSIBILITIES:~~ Seller agrees to hold Broker harmless as to any losses suffered by Broker because of any breach of  
136 contract by Seller where Broker has acted as agent for Seller according to terms and conditions set forth in this Listing, including the payment of  
137 reasonable attorney fees required to defend Broker from claims by a buyer of the Business or included property. Seller is aware that there is a  
138 potential risk of injury, damage or theft involving persons attending a showing of Real Property. Seller agrees to accept responsibility for preparing  
139 the Real Property to minimize the likelihood of injury, damage or loss of personal property located on the Real Property. Seller agrees to hold  
140 Broker harmless for any losses or liability resulting from personal injury, property damage or theft occurring during showings other than those  
141 caused by Broker's negligence or intentional wrongdoing.

142 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker have the legal right to unilaterally terminate this Listing absent a material breach of  
143 contract by the other Party. Seller understands that the Parties to the Listing are Seller and the Broker (firm). Agents (salespersons) for Broker  
144 (firm) do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of  
145 this Listing, without the written consent of the agent's supervising broker. Seller and Broker agree that any termination of this Listing by either party  
146 before the date stated on line xxx shall be indicated to the other Party in writing and shall not be effective until delivered to the other Party in  
147 accordance with lines xxx-xxx. CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating party to potentially  
148 be liable for damages.

149 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in Broker's trust account.  
150 Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money, Seller authorizes Broker to disburse the  
151 earnest money as directed in a written earnest money disbursement agreement signed by or on behalf of all parties having an interest in the trust  
152 funds, pursuant to the terms of the offer to purchase, option or exchange agreement used in the transaction. If negotiations do not result in an  
153 accepted offer, the earnest money shall be promptly disbursed (after clearance from the depository institution if earnest money is paid by check)  
154 to the person who paid the earnest money. CAUTION: If someone other than a buyer makes payment of earnest money on behalf of a  
155 buyer, consider a special agreement regarding disbursement at that time.—If the offer is accepted, the transaction fails to close and the earnest  
156 money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for cash.

Page 3 of 6, WB-6

157 ~~cash~~ advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to  
158 Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to Broker  
159 shall not terminate this Listing Contract or limit Broker's entitlement to commission in subsequent transactions.

160 ■ **NON-DISCRIMINATION:** ~~S~~seller and ~~B~~roker agree that they will not discriminate against any prospective ~~buyer~~ purchaser ~~buyer~~ on  
161 account of race, color, sex, sexual orientation as defined in ~~W~~Wis. ~~S~~Stats. § 111.32 (13m), disability, religion, national origin, marital  
162 status, lawful source of income, age, ancestry, familial status, or in any other unlawful manner.

163 ■ ~~DELIVERY:~~ Unless otherwise stated, delivery of documents or written notices may be accomplished by: 1) giving the document or written  
164 notice personally to the Party; 2) by depositing the document or written notice postage or fees prepaid in the U.S. Mail or a commercial delivery  
165 system addressed to the Party at the Party's address on line 322; 3) by electronically transmitting the document or written notice to the Party's fax  
166 number at line 323. Any signed document delivered by electronic transmission to the fax number at line 323 shall be treated in all manner and  
167 respects as an original document and the signature of any Party upon a document transmitted by fax shall be considered an original signature.  
168 Any document transmitted by fax shall have the binding legal effect of an original document.

169 ■ **BROKER DISCLOSURE TO CLIENTS:**

170 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

171 (a) The duty to provide brokerage services to you fairly and honestly.

- 172 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.  
173 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless  
174 disclosure of the information is prohibited by law.  
175 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is  
176 prohibited by law. (See Lines 28-37)  
177 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or  
178 the confidential information of other parties. (See Lines 71-89)  
179 (f) The duty to safeguard trust funds and other property the broker holds.  
180 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages  
181 and disadvantages of the proposals.

182 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE BROKER'S CLIENT. A**  
183 **BROKER OWES ADDITIONAL DUTIES TO A CLIENT.**

- 184 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you  
185 release the broker from this duty.  
186 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.  
187 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within the  
188 scope of the agency agreement.  
189 (d) The broker will negotiate for you, unless you release the broker from this duty.  
190 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give  
191 information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to your  
192 interests.

193 If you become involved in a transaction in which another party is also the broker's client (a "multiple representation relationship"),  
194 different duties may apply.

195 **■ MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

196 **■** A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a party in the  
197 same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction consent, the broker may  
198 provide services to the clients through designated agency.

199 **■** Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the other  
200 client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide information, opinions, and  
201 advice to the client for whom the salesperson is negotiating, to assist the client in the negotiations. Each client will be able to receive  
202 information, opinions, and advice that will assist the client, even if the information, opinions, or advice gives the client advantages in the  
203 negotiations over the broker's other clients. A salesperson will not reveal any of your confidential information to another party unless  
204 required to do so by law.

205 **■** If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If you  
206 authorize a multiple representation relationship the broker may provide brokerage services to more than one client in a transaction but  
207 neither the broker nor any of the broker's salespersons may assist any client with information, opinions, and advice which may favor the  
208 interests of one client over any other client. If you do not consent to a multiple representation relationship the broker will not be allowed  
209 to provide brokerage services to more than one client in the transaction.

210 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

- 211 \_\_\_\_\_ I consent to *multiple representation relationships* with designated agency.  
212 \_\_\_\_\_ I consent to multiple representation relationships, but I do not consent to designated agency.  
213 \_\_\_\_\_ I reject multiple representation relationships.

214 **NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION**  
215 **RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO**  
216 **YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE**  
217 **ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY**  
218 **RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY**  
219 **AGREEMENT.**

Page 4 of 6, WB-6

220 **■ SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist your broker by  
221 providing brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your interests.  
222 A subagent will not, unless required by law, provide advice or opinions to other parties if doing so is contrary to your interests.

223 **PLEASE REVIEW THIS INFORMATION CAREFULLY.** A broker or salesperson can answer your questions about brokerage services,  
224 but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector. This  
225 disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain-language summary of a  
226 broker's duties to you under section 452.133(2) of the Wisconsin statutes.

227 **■ CONFIDENTIALITY NOTICE TO CLIENTS:** broker will keep confidential any information given to broker in confidence, or any information  
228 obtained by broker that he or she knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law  
229 or you authorize the broker to disclose particular information. A broker shall continue to keep the information confidential after the broker is no  
230 longer providing brokerage services to you. The following information is required to be disclosed by law:

- 231 1) Material adverse facts, as defined in section 452.01(5g) of the Wisconsin statutes (see lines xx-xx).  
232 2) Any facts known by the broker that contradict any information included in a written inspection report on the property or real estate that is the

233 subject of the transaction.  
234 To ensure that the broker is aware of what specific information you consider confidential, you may list that information below (see lines xx-xx). At a  
235 later time, you may also provide the broker with other information you consider to be confidential.

236 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_  
237 \_\_\_\_\_  
238 \_\_\_\_\_

239 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): \_\_\_\_\_  
240 \_\_\_\_\_  
241 \_\_\_\_\_

242 ■ **DEFINITIONS:**

243 ■ **ADVERSE FACT:** An "Adverse Fact" means any of the following:

244 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

- 245 1) Significantly and adversely affecting the value of the Property;
- 246 2) significantly reducing the structural integrity of improvements to real estate; or
- 247 3) presenting a significant health risk to occupants of the Property.

248 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a  
249 contract or agreement made concerning the transaction.

250 ■ **BUSINESS PERSONAL PROPERTY:** "Business Personal Property" is defined as all tangible and intangible personal property and rights  
251 in personal property owned by Seller and used in the Business, including furniture, trade fixtures and equipment, tools used in business,  
252 telephone numbers and listings, if transferable, customer lists, trade names, business records, supplies, leases, advance lease deposits,  
253 customer deposits, signs, all other personal property used in the Business, and if transferable, all permits, special licenses and franchises, except  
254 those assets disposed of in the ordinary course of business or as permitted by the Offer.

255 ■ ~~**CONDITIONS AFFECTING THE BUSINESS, INCLUDED PROPERTY OR THE TRANSACTION:** A "condition affecting the Business,~~  
256 ~~included property or the transaction" is defined as follows:~~

257 (a) ~~Planned or commenced public improvements which may result in special assessments or otherwise materially affect the Business or~~  
258 ~~included property or the present use of the Business or included property included in this Listing;~~

259 (b) ~~Government agency or court order requiring repair, alteration or correction of any existing condition;~~

260 (c) ~~Material violation of the Americans with Disabilities Act (ADA) or other state or local laws requiring minimum accessibility for persons~~  
261 ~~with disabilities; **Note: A Building owner's or tenant's obligations under the ADA may vary dependent upon the financial or other**~~  
262 ~~capabilities of the building owner or tenant.~~

263 (d) ~~Completed or pending reassessment of the real property or business personal property included in this Listing for tax purposes;~~

264 (e) ~~Structural inadequacies which if not repaired will significantly shorten the expected normal life of the real property included in this Listing;~~

265 (f) ~~Any land division involving the real property included in this Listing, for which required state or local approvals were not obtained;~~

266 (g) ~~Construction or remodeling on the real property included in this Listing for which required state or local approvals were not obtained;~~

267 (h) ~~Any portion of the real property included in this Listing being in a 100-year floodplain, a wetland or shoreland zoning area under local,~~  
268 ~~state or federal regulations;~~

269 (i) ~~That a structure which the Business occupies or which is located on the real property included in this Listing is designated as a historic~~  
270 ~~building or that any part of a structure which the Business occupies or the real property included in this Listing is in a historic district;~~

271 (j) ~~Material violations of environmental laws or other laws or agreements regulating the Business or use of the real property included in this~~  
272 ~~Listing;~~

273 (k) ~~Conditions constituting a significant health or safety hazard for occupants of the Business or real property included in this Listing;~~

274 (l) ~~Material levels of hazardous substances located on the premises which the Business occupies or on the real property included in this~~  
275 ~~Listing or previous storage of material amounts of hazardous substances on the premises which the Business occupies or on the real property~~  
276 ~~included in this Listing;~~

277 (m) ~~Material levels of medical or infectious waste located on the premises which the Business occupies or on the real property included in~~  
278 ~~this Listing, or previous storage of material amounts of medical or infectious waste on the premises which the Business occupies or on the real~~  
279 ~~property included in this Listing Property;~~

280 (n) ~~Underground storage tanks for storage of flammable or combustible liquids including but not limited to gasoline and heating oil on the~~  
281 ~~premises which the Business occupies or on the real property included in this Listing; NOTE: The Wisconsin Administrative Code contains~~  
282 ~~registration and operation rules for such underground storage tanks.~~

283 (o) ~~Underground or aboveground storage tanks for storage of flammable, combustible or hazardous materials including but not limited to~~  
284 ~~gasoline and heating oil, which are currently or which were previously located on the premises which the Business occupies or on the real~~  
285 ~~property included in this Listing;~~

286 (p) ~~High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the real property~~  
287 ~~included in this Listing;~~

288 (q) ~~Any material defects in any of the equipment, appliances, business fixtures, fixtures, tools, furniture or other business personal property~~  
289 ~~included in this Listing, and Seller further warrants that all will be in good working order on the day of closing;~~

290 (r) ~~Any encumbrances on the Business, all integral parts thereof, or the included property being conveyed in conjunction with the Business,~~  
291 ~~except as stated in this contract and in any addendum attached to it;~~

292 (s) — Any litigation, government proceeding or investigation in progress or threatened or in prospect against or related to the Business or the  
293 property included in this Listing;

294 (t) — Any road change, road work or change in road access which would materially affect the present use or access to the Business or the  
295 real property included in this Listing;

296 (u) — Any right granted to underlying lien holder(s) to accelerate the debtor's obligation by reason of the transfer of ownership of Business or  
297 other property included in the Listing, or any permission to transfer being required and not obtained;

298 (v) — Any unpaid business taxes such as: income; sales; payroll; Social Security; unemployment; or any other employer/employee taxes due  
299 and payable or accrued;

300 (w) — A material failure of the financial statements, or schedules to the financial statements, to present the true and correct condition of the  
301 Business as of the date of the statements and schedules or a material change in the financial condition or operations of the Business since the  
302 date of the last financial statements and schedules provided by Seller, except for changes in the ordinary course of business which are not in the  
303 aggregate materially adverse;

304 (x) — Other conditions or occurrences which would significantly reduce the value of the Business or property included in this Listing to a  
305 reasonable person with knowledge of the nature and scope of the condition or occurrence.

306 ■ **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the event occurred and  
307 by counting subsequent calendar days.

308 ■ **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or buildings so as to be treated  
309 as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items  
310 specifically adapted to the premises, and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and  
311 trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central  
312 heating and cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings;  
313 awnings; attached antennas, garage door openers and remote controls; installed security systems; central vacuum systems and accessories;  
314 in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and  
315 docks/piers on permanent foundations. A Fixture does not include trade fixtures owned by tenants of the Property. CAUTION: Exclude  
316 Fixtures not owned by Seller such as rented Fixtures and tenant's trade fixtures. Land as to be treated as part of the real estate, including,  
317 without limitation, physically attached items not easily removable without damage to the Property, items specifically adapted to the Property, and  
318 items customarily treated as fixtures (See lines 268 and 276-278).—

319 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such significance, or that  
320 is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the  
321 party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the  
322 terms of such a contract or agreement.

323 ■ **INCLUDED PROPERTY:** "Included property" is defined as all business personal property (as defined at lines 202—206), real property and  
324 other property of any kind or interest in any property of any kind which has been included in the purchase price (See lines 7 to 10).

325 ■ **PERSON ACTING ON BEHALF OF BUYER:** In this Agreement "Person Acting on Behalf of Buyer" shall mean any person  
326 joined in interest with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents,  
327 servants, employees, directors, managers, members, officers, owners and partners, as well as any and all corporations,  
328 partnerships, limited liability companies or other entities controlled by, affiliated with or owned by buyer in whole or in part.

329 ■ **PROCURE:** A purchaser-buyer is procured when during the term of the Listing, an enforceable contract of sale is entered into between the  
330 Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written offer at the price and on  
331 substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer submitting the written offer has the ability to  
332 complete the buyer's a valid and binding contract of sale is entered into between the Seller and the purchaser or when a ready, willing and able  
333 purchaser submits a written offer at the price and on substantially the terms specified in this Listing.—A purchaser is ready, willing and able when  
334 the purchaser submitting the written offer has the ability to complete the purchaser's obligations under the written offer. See lines xx-xx.

335 ■ **PROTECTED BUYER:** Means a buyer who personally, or through any Person Acting on Behalf of Buyer, during the term of this  
336 Listing: 1) delivers to Seller or Broker a written offer to purchase, exchange or option on the Assets; 2) negotiates directly with Seller by  
337 discussing with Seller the potential terms upon which buyer might acquire an interest in the Assets; or 3) attends an individual showing  
338 of the Assets or discusses with Broker or cooperating brokers the potential terms upon which buyer might acquire an interest in the  
339 Assets, but only if Broker delivers the buyer's name to Seller, in writing, no later than three days after the expiration of the Listing. The  
340 requirement in 3), to deliver the buyer's name to Seller in writing, may be fulfilled as follows: a) If the Listing is effective only as to certain  
341 individuals who are identified in the Listing, by the identification of the individuals in the Listing; or b) if a buyer has requested that the  
342 buyer's identity remain confidential, by delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s)  
343 of any showings or other negotiations.

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

347 ■ **REAL PROPERTY INCLUDED IN LIST PRICE PROVISIONS:**

348 **NOTE: LINES 269 — 297xxx-xxx ARE A PART OF THIS LISTING ONLY IF REAL PROPERTY IS INCLUDED IN THE LIST PRICE**

349 ■ **DESCRIPTION OF REAL PROPERTY INCLUDED IN LIST PRICE** \_\_\_\_\_  
350 \_\_\_\_\_  
351 \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_

352 County of \_\_\_\_\_, Wisconsin. (Additional description, if any:) \_\_\_\_\_

353 \_\_\_\_\_

354 ■ **OCCUPANCY:** Unless otherwise provided, Seller agrees to give buyer occupancy of the Property at time of closing and to have the Property in  
355 broom swept condition and free of all debris and personal property except for personal property belonging to current tenants, sold to buyer or left  
356 with buyer's consent.

357 OCCUPANCY DATE: \_\_\_\_\_ OCCUPANCY CHARGE: (if Seller occupies after closing): \$ \_\_\_\_\_  
358 per day or part thereof.

359 **PROPERTY INCLUDED IN LIST PRICE:** Seller agrees to include in the list price all fixtures as defined at lines 258-260, unless excluded at  
360 lines 11-13. **Caution: Exclude fixtures not owned by Seller such as rented fixtures and tenant's trade fixtures.** The Offer's terms will  
361 determine what property is included or excluded.

362 ■ **CONDITION OF TITLE:** Upon payment of the purchase price, Seller shall convey the real property by warranty deed (or other conveyance as  
363 provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements 281 entered under  
364 them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and 282 covenants, general  
365 taxes levied in the year of closing and \_\_\_\_\_  
366 \_\_\_\_\_ (provided none of the foregoing prohibit present use of the real property)

367 **CAUTION CONSIDER THE NEED TO ADDRESS UCC SECURITY INTERESTS, CONDITIONAL USES, NONCONFORMING USES, ETC.**

368 ■ **TITLE EVIDENCE:** Seller shall provide evidence of the condition of title in the form agreed to by buyer and Seller in the offer to purchase.

369 ■ **SELLER'S DISCLOSURE REPORT:** Wisconsin Administrative Code Chapter REEBL 24 requires listing brokers to make inquiries of the  
370 seller on the condition of the real property and to request that the seller provide a written response to the broker's inquiry. **If the Assets include**  
371 **Property,** Seller agrees to complete the a seller's disclosure report provided by Broker to the best of Seller's ability/knowledge. Seller agrees to  
372 promptly amend the report to include any defects (as defined in the report) which Seller learns of after completion of the report, **but before**  
373 **acceptance of a buyer's offer to purchase.** Seller authorizes Broker to distribute the report to all interested parties and their agents **inquiring about**  
374 **the Assets,** and **acknowledges that Broker has a duty** to disclose all adverse material adverse facts as required by law.

375 ■ **SELLER REPRESENTATIONS REGARDING PROPERTY DEFECTS:** Seller represents to Broker that as of the date of this Listing,  
376 if the Assets includes Property and if a seller's disclosure report or other form of written response to Broker's inquiry regarding the  
377 condition of the Property has been made by the Seller, the Seller has no notice or knowledge of any defects affecting the Property other  
378 than those noted on Seller's disclosure report or written response.

379 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR DAMAGES**  
380 **AND COSTS.**

381 ■ **INSPECTIONS:** Seller agrees to allow buyer's inspectors and testers reasonable access to the real property upon reasonable notice if the

Page 6 of 6, WB-6

382 inspections or tests are reasonably necessary to satisfy contingencies in the offer. Seller acknowledges that certain inspections or tests may  
383 detect environmental contamination which may be required to be reported to the Wisconsin Department of Natural Resources.

384 ■ **LEASED PROPERTY:** If the real property included in the list price is currently leased to third parties and the lease(s) will extend beyond  
385 closing, Seller shall assign Seller's rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed-upon  
386 prorations) thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by tenants.

387 **CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the lease(s) unless released**  
388 **by tenants.**

389 ■ **ADDITIONAL PROVISIONS:** Notice: You may obtain information about the sex offender registry and persons registered with the registry by  
390 contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by phone at 8772340085.

391 \_\_\_\_\_  
392 \_\_\_\_\_  
393 \_\_\_\_\_  
394 \_\_\_\_\_  
395 \_\_\_\_\_  
396 \_\_\_\_\_  
397 \_\_\_\_\_  
398 \_\_\_\_\_

399 ■ **ADDENDA:** The attached \_\_\_\_\_ is/are made part of this Listing.

400 ■ **TERM OF THE CONTRACT:** From the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ up to  
401 and including midnight of the \_\_\_\_\_ day of \_\_\_\_\_,

402 **CAUTION: IF SIGNED, THIS LISTING CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BROKERS MAY PROVIDE A**  
403 **GENERAL EXPLANATION OF THE PROVISIONS OF THE LISTING BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR**  
404 **OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS LISTING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL**  
405 **ADVICE IS NEEDED. A LISTING FOR LEASE ALSO MUST BE ENTERED INTO IF BROKER IS TO BE AUTHORIZED TO PROCURE**  
406 **TENANTS.**

407 Dated this \_\_\_\_\_ day of \_\_\_\_\_,

408 **Seller Entity Name (if any):** \_\_\_\_\_

409 (x)  
410 Authorized Signature ▲ Print Name & Title Here ▶ Date ▲

411 (x)  
412 Authorized Signature ▲ Print Name & Title Here ▶ Date ▲

413 (x)  
414 Individual Seller's/Guarantor's Signature ▲ Print Name Title Here ▶ Date ▲

415 Seller Entity Name (if any):

416 (x)  
417 Authorized Signature ▲ Print Name & Title Here ▶ Date ▲

418 (x)  
419 Authorized Signature ▲ Print Name & Title Here ▶ Date ▲

420 (x)  
421 Individual Seller's/Guarantor's Signature ▲ Print Name Title Here ▶ Date ▲

422 (x)  
423 Agent for Broker ▲ Print Name Here: ▶ Broker/Firm Name ▲ Date ▲

**WB-06 Form 20121204 (With Tracking) Use Me**

**WB-6 BUSINESS LISTING CONTRACT – EXCLUSIVE RIGHT TO SELL**

**LISTING CONTRACT FOR SALE OF ASSETS ONLY.**

**CONSULT APPROPRIATE ADVISORS FOR TAX, LICENSING, LIABILITY OR RELATED ISSUES.**

1 SELLER GIVES BROKER THE EXCLUSIVE RIGHT TO SELL THE ASSETS ON THE FOLLOWING TERMS:

2 Business Name: \_\_\_\_\_  
3 Type of Business Entity (e.g., corporation, LLC, partnership, sole proprietorship, etc.): \_\_\_\_\_  
4 Business Description: \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_ (Lines 2-7 hereinafter referred to as the "Business")

8 Insert additional description, if any, at lines xxx-xxx or attach as an addendum per line xxx.

9 ■ **LIST PRICE:** \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

10 ■ **INCLUDED IN LIST PRICE:** Seller shall include in the list price (unless excluded at lines xx-xx) and transfer, free and clear of encumbrances,  
11 the Assets of the Business including all goodwill, stock-in-trade, trade fixtures, Fixtures (if interest in Real Estate is included), accounts receivable,  
12 all Business Personal Property, the interest in Real Estate (if included on lines xx-xx), and the following additional property

13 \_\_\_\_\_  
14 \_\_\_\_\_ [STRIKE AND COMPLETE AS APPLICABLE] (hereinafter collectively the "Assets").

15 Seller shall convey Business Personal Property and any other personal property by Bill of Sale or \_\_\_\_\_  
16 \_\_\_\_\_, free and clear of all liens and encumbrances except \_\_\_\_\_  
17 \_\_\_\_\_.

18 ■ **INTEREST IN REAL ESTATE** [CHECK BOX ON LINE XX OR XX, AS APPLICABLE]:

19  **NO INTEREST IN REAL ESTATE INCLUDED IN LIST PRICE**

20  **DESCRIPTION OF INTEREST IN REAL ESTATE INCLUDED IN LIST PRICE:**

21 Street address is: \_\_\_\_\_ in the  
22 \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_,  
23 Wisconsin (the "Real Estate").

24 The Real Estate is owned by: \_\_\_\_\_.

25 The Real Estate is leased to: \_\_\_\_\_.

26 The interest in the Real Estate included in the list price is:  ownership  leasehold  assignment of existing lease  other  
27 \_\_\_\_\_ . Insert any additional description, including further description  
28 of the type of interest in the Real Estate that is included in list price, at lines xxx-xxx or attach as an addendum per line xxx.

29 ■ **NOT INCLUDED IN LIST PRICE: CAUTION:** If Real Estate is included, identify any Fixtures to be excluded by Seller or which are rented  
30 and will continue to be owned by lessor (see lines xxx-xxx): \_\_\_\_\_  
31 \_\_\_\_\_  
32 \_\_\_\_\_.

33 ■ **MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to procure a buyer for the Assets. Broker's marketing  
34 may include: \_\_\_\_\_  
35 \_\_\_\_\_.

36 Broker may advertise the following special financing and incentives offered by Seller: \_\_\_\_\_  
37 \_\_\_\_\_.

38 Seller has a duty to cooperate with Broker's marketing efforts. See lines xx-xx regarding Broker's role as marketing agent and Seller's  
39 duty to notify Broker of any potential buyers known to Seller. Seller agrees that Broker may market other assets and properties during  
40 the term of this Listing.

41 ■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work and cooperate  
42 with other brokers in marketing the Assets, including brokers from other firms acting as subagents (agents from other companies  
43 engaged by Broker - See lines xxx-xxx) and brokers representing buyers. Cooperation includes providing access to the Assets for  
44 showing purposes and presenting offers and other proposals from these brokers to Seller. Note any brokers with whom Broker shall not  
45 cooperate, any brokers or buyers who shall not be allowed to attend showings, and the specific terms of offers which should not be  
46 submitted to Seller: \_\_\_\_\_.

47 CAUTION: Limiting Broker's cooperation with other brokers may reduce the marketability of the Assets.

48 ■ **EXCLUSIONS:** All persons who may acquire an interest in the Assets as a Protected Buyer under a prior listing contract are  
49 excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing. Within seven days of the  
50 date of this Listing, Seller agrees to deliver to Broker a written list of all such prospective buyers. The following other buyers are  
51 excluded from this Listing until \_\_\_\_\_ [INSERT DATE]: \_\_\_\_\_  
52 \_\_\_\_\_ . These other buyers are no longer excluded from this Listing after the specified date unless,

53 on or before the specified date, Seller has either accepted an offer from the buyer or sold the Assets to the buyer.

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

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

58 Seller's recipient for delivery (optional): \_\_\_\_\_

59 Broker's recipient for delivery (optional): \_\_\_\_\_

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

61 Seller: (\_\_\_\_\_) \_\_\_\_\_ Broker: (\_\_\_\_\_) \_\_\_\_\_

62 (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a commercial delivery  
63 service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery  
64 address at line xx or xx.

65 (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  
66 recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx or xx.

67 Delivery address for Seller: \_\_\_\_\_

68 Delivery address for Broker: \_\_\_\_\_

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

73 E-Mail address for Seller: \_\_\_\_\_

74 E-Mail address for Broker: \_\_\_\_\_

75 ■ **COMMISSION**: Broker's commission shall be \_\_\_\_\_.

76 Seller shall pay Broker's commission, which shall be earned if, during the term of this Listing:

77 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Assets;

78 2) Seller grants an option to purchase all or any part of the Assets which is subsequently exercised;

79 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Assets;

80 4) A transaction occurs which causes an effective change of ownership or control of all or any part of the Assets from Seller to a third party, other  
81 than in the ordinary course of business;

82 5) Seller transfers or sells any stock, shares, membership or partnership interest of the Business;

83 6) A buyer is Procured for the Assets by Broker, by Seller, or by any other person, at no less than the price and on substantially the terms set forth  
84 in this Listing and the standard provisions of the current WB-16 OFFER TO PURCHASE - BUSINESS WITH REAL ESTATE (if real property is  
85 included in the list price) or WB-17 OFFER TO PURCHASE - BUSINESS WITHOUT REAL ESTATE, which is/are incorporated by reference into  
86 this Listing, even if Seller does not accept this buyer's offer.

87 7) Seller enters into a management contract involving all or any part of the Assets during the term of this Listing.

88 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1) or 2) above, or  
89 calculated based on the list price under 3) (if an exchange of all Assets), 4), 5), 6 or 7). A percentage commission shall be calculated on the fair  
90 market value of the Assets exchanged under 3) if the exchange does not involve all Assets, or on the fair market value of the Assets to which an  
91 effective change in ownership or control takes place under 4) if the transaction does not involve all Assets. "Purchase price" shall include all  
92 consideration received by Seller including buyer assumptions of debt. Once earned, Broker's commission is due and payable in full at the earlier  
93 of closing or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of the Listing, one  
94 owner of the Assets sells, conveys, exchanges or options an interest in all or any part of the Assets to another owner, except by divorce judgment.

95 NOTE: A sale, option, exchange or Procurement of a buyer for a portion of the Assets does not terminate the Listing as to any remaining Assets.

96 NOTICE: Broker has the authority under section 779.32 of the Wisconsin Statutes to file a broker lien for commissions or compensation  
97 earned but not paid when due against the commercial real estate, or the interest in the commercial real estate, if any, that is the subject  
98 of this Listing. "Commercial real estate" includes all real estate except (a) real property containing 8 or fewer dwelling units, (b) real  
99 property that is zoned for residential purposes and that does not contain any buildings or structures, and (c) real property that is zoned  
100 for agricultural purposes.

101 ■ **COMPENSATION TO OTHERS**: Broker offers the following commission to cooperating brokers: \_\_\_\_\_

102 \_\_\_\_\_. (Exceptions if any): \_\_\_\_\_.

103 ■ **EXTENSION OF LISTING**: The Listing term is extended for a period of one year as to any Protected Buyer. Upon receipt of a written  
104 request from Seller or a broker who has listed the Assets, Broker agrees to promptly deliver to Seller a written list of those buyers known  
105 by Broker to whom the extension period applies. Should this Listing be terminated by Seller prior to the expiration of the term stated in  
106 this Listing, this Listing shall be extended for Protected Buyers, on the same terms, for one year after the Listing is terminated.

107 ■ **SELLER COOPERATION WITH MARKETING EFFORTS**: Seller agrees to cooperate with Broker in Broker's marketing efforts and to  
108 provide Broker with all records, documents and other material in Seller's possession or control which are required in connection with the sale.  
109 Seller authorizes Broker to do those acts reasonably necessary to effect a sale and Seller agrees to cooperate fully with these efforts which may  
110 include Internet advertising or a lockbox system on the Real Estate. Seller shall promptly notify Broker in writing of the names and contact  
111 information of any potential buyers known to Seller, who contact Seller or with whom Seller negotiates during the term of this Listing and shall  
112 promptly refer all such potential buyers and all persons making inquiries concerning the Assets to Broker.

113 ■ **SELLER AUTHORITY TO SELL:** Seller represents that Seller has authority to convey the Assets. If the owner is an entity, Seller  
114 agrees, within ten days of the execution of this Listing, to provide Broker with a copy of documents evidencing that the sale of the Assets  
115 has been properly authorized.

116 ■ **DOCUMENTS AND RECORDS:** Seller agrees to promptly deliver all financial, business or other records, documents or other materials  
117 related to the Assets or transaction required in connection with the marketing or sale. **Seller warrants that all written documents and records**  
118 **given to Broker in conjunction with the marketing or sale of the Assets shall be true and accurate.** Seller agrees to hold Broker harmless  
119 from loss by reason of Broker's use of these documents and records, including the payment of reasonable attorney fees in the event of any suit  
120 against Broker arising out of the use of these documents and records. Seller authorizes Broker to distribute any or all of the documents and  
121 records given to Broker to prospective buyers and their business, legal or tax counsel.

122 ■ **SELLER'S RESPONSIBILITIES:** Seller agrees to hold Broker harmless as to any losses suffered by Broker because of any breach  
123 of contract by Seller where Broker has acted as agent for Seller according to terms and conditions set forth in this Listing, including the  
124 payment of reasonable attorney fees required to defend Broker from claims by a buyer of the Assets. Seller is aware that there is a  
125 potential risk of injury, damage or theft involving persons attending a showing of real the Property Assets. Seller agrees to accept  
126 responsibility for preparing the real Assets Property to minimize the likelihood of injury, damage or loss of personal property located on  
127 the real Assets Property. Seller agrees to hold Broker harmless for any losses or liability resulting from personal injury, property damage  
128 or theft occurring during showings other than those caused by Broker's negligence or intentional wrongdoing. Seller acknowledges that  
129 individual showings and open houses may be conducted by licensees other than Broker, that appraisers and inspectors may conduct  
130 appraisals and inspections without being accompanied by Broker or other licensees, and that buyers or licensees may be present at all  
131 inspections and testing and may photograph or videotape the Assets Property unless otherwise provided for in additional provisions at  
132 lines xxx-xxx or in an addendum per lines xxx-xxx.

133 ■ ~~SELLER'S RESPONSIBILITIES:~~ Seller agrees to hold Broker harmless as to any losses suffered by Broker because of any breach of  
134 contract by Seller where Broker has acted as agent for Seller according to terms and conditions set forth in this Listing, including the payment of  
135 reasonable attorney fees required to defend Broker from claims by a buyer of the Business or included property. Seller is aware that there is a  
136 potential risk of injury, damage or theft involving persons attending a showing of Real Property. Seller agrees to accept responsibility for preparing  
137 the Real Property to minimize the likelihood of injury, damage or loss of personal property located on the Real Property. Seller agrees to hold  
138 Broker harmless for any losses or liability resulting from personal injury, property damage or theft occurring during showings other than those  
139 caused by Broker's negligence or intentional wrongdoing.

140 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker have the legal right to unilaterally terminate this Listing absent a material breach of  
141 contract by the other Party. Seller understands that the Parties to the Listing are Seller and the Broker (firm). Agents (salespersons) for Broker  
142 (firm) do not have the authority to enter into a mutual agreement to terminate the Listing, amend the commission amount or shorten the term of  
143 this Listing, without the written consent of the agent's supervising broker. **Seller and Broker agree that any termination of this Listing by either party**  
144 **before the date stated on line xxx shall be indicated to the other Party in writing and shall not be effective until delivered to the other Party in**  
145 **accordance with lines xxx-xxx. CAUTION: Early termination of this Listing may be a breach of contract, causing the terminating party to potentially**  
146 **be liable for damages.**

147 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in Broker's trust account.  
148 Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money, Seller authorizes Broker to disburse the  
149 earnest money **as directed in a written earnest money disbursement agreement signed by or on behalf of all parties having an interest in the trust**  
150 **funds, pursuant to the terms of the offer to purchase, option or exchange agreement used in the transaction. If negotiations do not result in an**  
151 **accepted offer, the earnest money shall be promptly disbursed (after clearance from the depository institution if earnest money is paid by check)**  
152 **to the person who paid the earnest money. CAUTION: If someone other than a buyer makes payment of earnest money on behalf of a**  
153 **buyer, consider a special agreement regarding disbursement at that time.**—If the offer is accepted, the transaction fails to close and the earnest  
154 money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for **cash**.

Page 3 of 6, WB-6

155 ~~cash~~ advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission, shall be paid to  
156 Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong to Seller. This payment to Broker  
157 shall not terminate this Listing ~~Contract or limit Broker's entitlement to commission in subsequent transactions.~~

158 ■ **NON-DISCRIMINATION:** ~~S~~seller and ~~B~~roker agree that they will not discriminate against any prospective  ~~purchaser~~ **buyer on**  
159 **account of race, color, sex, sexual orientation as defined in W.wis. SStats. § 111.32(13m), disability, religion, national origin, marital**  
160 **status, lawful source of income, age, ancestry, familial status, or in any other unlawful manner.**

161 ■ ~~DELIVERY:~~ Unless otherwise stated, delivery of documents or written notices may be accomplished by: 1) giving the document or written  
162 notice personally to the Party; 2) by depositing the document or written notice postage or fees prepaid in the U.S. Mail or a commercial delivery  
163 system addressed to the Party at the Party's address on line 322; 3) by electronically transmitting the document or written notice to the Party's fax  
164 number at line 323. Any signed document delivered by electronic transmission to the fax number at line 323 shall be treated in all manner and  
165 respects as an original document and the signature of any Party upon a document transmitted by fax shall be considered an original signature.  
166 Any document transmitted by fax shall have the binding legal effect of an original document.

167 ■ **BROKER DISCLOSURE TO CLIENTS:**

168 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 169 (a) The duty to provide brokerage services to you fairly and honestly.
- 170 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 171 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request it, unless

- 172 disclosure of the information is prohibited by law.
- 173 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the information is  
174 prohibited by law. (See Lines 28-37)
- 175 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential information or  
176 the confidential information of other parties. (See Lines 71-89)
- 177 (f) The duty to safeguard trust funds and other property the broker holds.
- 178 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the advantages  
179 and disadvantages of the proposals.

180 **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE BROKER'S CLIENT. A**  
181 **BROKER OWES ADDITIONAL DUTIES TO A CLIENT.**

- 182 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction, unless you  
183 release the broker from this duty.
- 184 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.
- 185 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are within the  
186 scope of the agency agreement.
- 187 (d) The broker will negotiate for you, unless you release the broker from this duty.
- 188 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by law, give  
189 information or advice to other parties who are not the broker's clients, if giving the information or advice is contrary to your  
190 interests.

191 If you become involved in a transaction in which another party is also the broker's client (a "multiple representation relationship"),  
192 different duties may apply.

193 **■ MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

194 **■** A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a party in the  
195 same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction consent, the broker may  
196 provide services to the clients through designated agency.

197 **■** Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the other  
198 client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide information, opinions, and  
199 advice to the client for whom the salesperson is negotiating, to assist the client in the negotiations. Each client will be able to receive  
200 information, opinions, and advice that will assist the client, even if the information, opinions, or advice gives the client advantages in the  
201 negotiations over the broker's other clients. A salesperson will not reveal any of your confidential information to another party unless  
202 required to do so by law.

203 **■** If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship. If you  
204 authorize a multiple representation relationship the broker may provide brokerage services to more than one client in a transaction but  
205 neither the broker nor any of the broker's salespersons may assist any client with information, opinions, and advice which may favor the  
206 interests of one client over any other client. If you do not consent to a multiple representation relationship the broker will not be allowed  
207 to provide brokerage services to more than one client in the transaction.

208 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

- 209 \_\_\_\_\_ I consent to *multiple representation relationships* with designated agency.
- 210 \_\_\_\_\_ I consent to multiple representation relationships, but I do not consent to designated agency.
- 211 \_\_\_\_\_ I reject multiple representation relationships.

212 **NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION**  
213 **RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO**  
214 **YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE**  
215 **ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY**  
216 **RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY**  
217 **AGREEMENT.**

Page 4 of 6, WB-6

218 **■ SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist your broker by  
219 providing brokerage services for your benefit. A subagent will not put the subagent's own interests ahead of your interests.

220 A subagent will not, unless required by law, provide advice or opinions to other parties if doing so is contrary to your interests.  
221 **PLEASE REVIEW THIS INFORMATION CAREFULLY.** A broker or salesperson can answer your questions about brokerage services,  
222 but if you need legal advice, tax advice, or a professional home inspection, contact an attorney, tax advisor, or home inspector. This  
223 disclosure is required by section 452.135 of the Wisconsin statutes and is for information only. It is a plain-language summary of a  
224 broker's duties to you under section 452.133(2) of the Wisconsin statutes.

225 **■ CONFIDENTIALITY NOTICE TO CLIENTS:** broker will keep confidential any information given to broker in confidence, or any information  
226 obtained by broker that he or she knows a reasonable person would want to be kept confidential, unless the information must be disclosed by law  
227 or you authorize the broker to disclose particular information. A broker shall continue to keep the information confidential after the broker is no  
228 longer providing brokerage services to you. The following information is required to be disclosed by law:

- 229 1) Material adverse facts, as defined in section 452.01(5g) of the Wisconsin statutes (see lines xx-xx).
- 230 2) Any facts known by the broker that contradict any information included in a written inspection report on the property or real estate that is the  
231 subject of the transaction.

232 To ensure that the broker is aware of what specific information you consider confidential, you may list that information below (see lines xx-xx). At a

233 later time, you may also provide the broker with other information you consider to be confidential.

234 **CONFIDENTIAL INFORMATION:** \_\_\_\_\_

235 \_\_\_\_\_

236 \_\_\_\_\_

237 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): \_\_\_\_\_

238 \_\_\_\_\_

239 \_\_\_\_\_

240 ■ **DEFINITIONS:**

241 ■ **ADVERSE FACT:** An "Adverse Fact" means any of the following:

242 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:

243 1) Significantly and adversely affecting the value of the Property;

244 2) significantly reducing the structural integrity of improvements to real estate; or

245 3) presenting a significant health risk to occupants of the Property.

246 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her obligations under a contract or agreement made concerning the transaction.

248 ■ **BUSINESS PERSONAL PROPERTY:** "Business Personal Property" is defined as all tangible and intangible personal property and rights in personal property owned by Seller and used in the Business, including furniture, trade fixtures and equipment, tools used in business, telephone numbers and listings, if transferable, customer lists, trade names, business records, supplies, leases, advance lease deposits, customer deposits, signs, all other personal property used in the Business, and if transferable, all permits, special licenses and franchises, except those assets disposed of in the ordinary course of business or as permitted by the Offer.

253 ■ ~~**CONDITIONS AFFECTING THE BUSINESS, INCLUDED PROPERTY OR THE TRANSACTION:**~~ A "condition affecting the Business, included property or the transaction" is defined as follows:

255 (a) ~~Planned or commenced public improvements which may result in special assessments or otherwise materially affect the Business or included property or the present use of the Business or included property included in this Listing;~~

257 (b) ~~Government agency or court order requiring repair, alteration or correction of any existing condition;~~

258 (c) ~~Material violation of the Americans with Disabilities Act (ADA) or other state or local laws requiring minimum accessibility for persons with disabilities; **Note: A Building owner's or tenant's obligations under the ADA may vary dependent upon the financial or other capabilities of the building owner or tenant.**~~

261 (d) ~~Completed or pending reassessment of the real property or business personal property included in this Listing for tax purposes;~~

262 (e) ~~Structural inadequacies which if not repaired will significantly shorten the expected normal life of the real property included in this Listing;~~

263 (f) ~~Any land division involving the real property included in this Listing, for which required state or local approvals were not obtained;~~

264 (g) ~~Construction or remodeling on the real property included in this Listing for which required state or local approvals were not obtained;~~

265 (h) ~~Any portion of the real property included in this Listing being in a 100-year floodplain, a wetland or shoreland zoning area under local, state or federal regulations;~~

267 (i) ~~That a structure which the Business occupies or which is located on the real property included in this Listing is designated as a historic building or that any part of a structure which the Business occupies or the real property included in this Listing is in a historic district;~~

269 (j) ~~Material violations of environmental laws or other laws or agreements regulating the Business or use of the real property included in this Listing;~~

271 (k) ~~Conditions constituting a significant health or safety hazard for occupants of the Business or real property included in this Listing;~~

272 (l) ~~Material levels of hazardous substances located on the premises which the Business occupies or on the real property included in this Listing or previous storage of material amounts of hazardous substances on the premises which the Business occupies or on the real property included in this Listing;~~

275 (m) ~~Material levels of medical or infectious waste located on the premises which the Business occupies or on the real property included in this Listing, or previous storage of material amounts of medical or infectious waste on the premises which the Business occupies or on the real property included in this Listing Property;~~

278 (n) ~~Underground storage tanks for storage of flammable or combustible liquids including but not limited to gasoline and heating oil on the~~

Page 5 of 6, WB-6

279 ~~premises which the Business occupies or on the real property included in this Listing; NOTE: The Wisconsin Administrative Code contains registration and operation rules for such underground storage tanks.~~

281 (o) ~~Underground or aboveground storage tanks for storage of flammable, combustible or hazardous materials including but not limited to gasoline and heating oil, which are currently or which were previously located on the premises which the Business occupies or on the real property included in this Listing;~~

284 (p) ~~High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the real property included in this Listing;~~

286 (q) ~~Any material defects in any of the equipment, appliances, business fixtures, fixtures, tools, furniture or other business personal property included in this Listing, and Seller further warrants that all will be in good working order on the day of closing;~~

288 (r) ~~Any encumbrances on the Business, all integral parts thereof, or the included property being conveyed in conjunction with the Business, except as stated in this contract and in any addendum attached to it;~~

290 (s) ~~Any litigation, government proceeding or investigation in progress or threatened or in prospect against or related to the Business or the property included in this Listing;~~

- 292 (t) — Any road change, road work or change in road access which would materially affect the present use or access to the Business or the
- 293 real property included in this Listing;
- 294 (u) — Any right granted to underlying lien holder(s) to accelerate the debtor's obligation by reason of the transfer of ownership of Business or
- 295 other property included in the Listing, or any permission to transfer being required and not obtained;
- 296 (v) — Any unpaid business taxes such as: income; sales; payroll; Social Security; unemployment; or any other employer/employee taxes due
- 297 and payable or accrued;
- 298 (w) — A material failure of the financial statements, or schedules to the financial statements, to present the true and correct condition of the
- 299 Business as of the date of the statements and schedules or a material change in the financial condition or operations of the Business since the
- 300 date of the last financial statements and schedules provided by Seller, except for changes in the ordinary course of business which are not in the
- 301 aggregate materially adverse;
- 302 (x) — Other conditions or occurrences which would significantly reduce the value of the Business or property included in this Listing to a
- 303 reasonable person with knowledge of the nature and scope of the condition or occurrence.

304 ■ **DEADLINES – DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the event occurred and  
 305 by counting subsequent calendar days.

306 ■ **FIXTURES:** A "Fixture" is an item of property which is physically attached to or so closely associated with land or buildings so as to be treated  
 307 as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items  
 308 specifically adapted to the premises, and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and  
 309 trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central  
 310 heating and cooling units and attached equipment; water heaters and treatment systems; sump pumps; attached or fitted floor coverings;  
 311 awnings; attached antennas, garage door openers and remote controls; installed security systems; central vacuum systems and accessories;  
 312 in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; storage buildings on permanent foundations and  
 313 docks/piers on permanent foundations. A Fixture does not include trade fixtures owned by tenants of the Property. CAUTION: Exclude  
 314 Fixtures not owned by Seller such as rented Fixtures and tenant's trade fixtures. land as to be treated as part of the real estate, including,  
 315 without limitation, physically attached items not easily removable without damage to the Property, items specifically adapted to the Property, and  
 316 items customarily treated as fixtures (See lines 268 and 276-278).—

317 ■ **MATERIAL ADVERSE FACT:** A "Material Adverse Fact" means an Adverse Fact that a party indicates is of such significance, or that  
 318 is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the  
 319 party's decision to enter into a contract or agreement concerning a transaction or affects or would affect the party's decision about the  
 320 terms of such a contract or agreement.

321 ■ **INCLUDED PROPERTY:** "Included property" is defined as all business personal property (as defined at lines 202—206), real property and  
 322 other property of any kind or interest in any property of any kind which has been included in the purchase price (See lines 7 to 10).

323 ■ **PERSON ACTING ON BEHALF OF BUYER:** In this Agreement "Person Acting on Behalf of Buyer" shall mean any person joined  
 324 in interest with buyer, or otherwise acting on behalf of buyer, including but not limited to buyer's immediate family, agents, servants,  
 325 employees, directors, managers, members, officers, owners, partners, **incorporators, and organizers**, as well as any and all  
 326 corporations, partnerships, limited liability companies or other entities controlled by, affiliated with or owned by buyer in whole or in part.

327 ■ **PROCURE:** A purchaser-buyer is procured when during the term of the Listing, an enforceable contract of sale is entered into between the  
 328 Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written offer at the price and on  
 329 substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer submitting the written offer has the ability to  
 330 complete the buyer's a valid and binding contract of sale is entered into between the Seller and the purchaser or when a ready, willing and able  
 331 purchaser submits a written offer at the price and on substantially the terms specified in this Listing.—A purchaser is ready, willing and able when  
 332 the purchaser submitting the written offer has the ability to complete the purchaser's obligations under the written offer. See lines xx-xx.

333 ■ **PROTECTED BUYER:** Means a buyer who personally, or through any **Person Acting on Behalf of Buyer**, during the term of this  
 334 Listing: 1) delivers to Seller or Broker a written offer to purchase, exchange or option on the Assets; 2) negotiates directly with Seller by  
 335 discussing with Seller the potential terms upon which buyer might acquire an interest in the Assets; or 3) attends an individual showing  
 336 of the Assets or discusses with Broker or cooperating brokers the potential terms upon which buyer might acquire an interest in the  
 337 Assets, but only if Broker delivers the buyer's name to Seller, in writing, no later than three days after the expiration of the Listing. The  
 338 requirement in 3), to deliver the buyer's name to Seller in writing, may be fulfilled as follows: a) If the Listing is effective only as to certain  
 339 individuals who are identified in the Listing, by the identification of the individuals in the Listing; or b) if a buyer has requested that the  
 340 buyer's identity remain confidential, by delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s)  
 341 of any showings or other negotiations.

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

345 ■ **REAL PROPERTY ESTATE INCLUDED IN LIST PRICE PROVISIONS:**

346 NOTE: LINES 269 — 297xxx-xxx ARE A PART OF THIS LISTING ONLY IF **REAL PROPERTY REAL ESTATE** IS INCLUDED IN THE  
 347 LIST PRICE

348 ■ **DESCRIPTION OF REAL PROPERTY INCLUDED IN LIST PRICE** \_\_\_\_\_:  
 349 \_\_\_\_\_  
 350 \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_,  
 351 County of \_\_\_\_\_, Wisconsin. (Additional description, if any): \_\_\_\_\_

352 \_\_\_\_\_  
353 ■ **OCCUPANCY:** Unless otherwise provided, Seller agrees to give buyer occupancy of the Real Estate at time of closing and to have the Real  
354 Estate in broom swept condition and free of all debris and personal property except for personal property belonging to current tenants, sold to  
355 buyer or left with buyer's consent.

356 OCCUPANCY DATE: \_\_\_\_\_ OCCUPANCY CHARGE: (if Seller occupies after closing): \$ \_\_\_\_\_  
357 per day or part thereof.

358 ~~PROPERTY INCLUDED IN LIST PRICE:~~ Seller agrees to include in the list price all fixtures as defined at lines 258-260, unless excluded at  
359 lines 11-13. ~~Caution: Exclude fixtures not owned by Seller such as rented fixtures and tenant's trade fixtures.~~ The Offer's terms will  
360 determine what property is included or excluded.

361 ■ ~~CONDITION OF TITLE:~~ Upon payment of the purchase price, Seller shall convey the real property by warranty deed (or other conveyance as  
362 provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements 281 entered under  
363 them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and 282 covenants, general  
364 taxes levied in the year of closing and \_\_\_\_\_  
365 \_\_\_\_\_ (provided none of the foregoing prohibit present use of the real property)

366 **CAUTION CONSIDER THE NEED TO ADDRESS UCC SECURITY INTERESTS, CONDITIONAL USES, NONCONFORMING USES, ETC.**

367 ■ ~~TITLE EVIDENCE:~~ Seller shall provide evidence of the condition of title in the form agreed to by buyer and Seller in the offer to purchase.

368 ■ **SELLER'S DISCLOSURE REPORT:** Wis. ~~consin~~ Admin. ~~istrative~~ Code Chapter R ~~EEB~~ 24 requires listing brokers to make inquiries of the  
369 seller on the condition of the ~~real property~~ real estate and to request that the seller provide a written response to the broker's inquiry. ~~If the Assets~~  
370 ~~include Real Estate,~~ Seller agrees to complete ~~the a~~ seller's disclosure report ~~provided by Broker~~ to the best of Seller's ~~ability~~ knowledge. Seller  
371 agrees to promptly amend the report to include any defects (as defined in the report) which Seller learns of after completion of the report, ~~but~~  
372 ~~before acceptance of a buyer's offer to purchase.~~ Seller authorizes Broker to distribute the report to all interested parties and their agents ~~inquiring~~  
373 ~~about the Assets,~~ and ~~acknowledges that Broker has a duty~~ to disclose all ~~adverse~~-material ~~adverse~~ facts as required by law.

374 ■ **SELLER REPRESENTATIONS REGARDING REAL ESTATE DEFECTS:** Seller represents to Broker that as of the date of this  
375 Listing, if the Assets includes Real Estate and if a seller's disclosure report or other form of written response to Broker's inquiry  
376 regarding the condition of the Real Estate has been made by the Seller, the Seller has no notice or knowledge of any defects affecting  
377 the Real Estate other than those noted on Seller's disclosure report or written response.

378 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR DAMAGES**  
379 **AND COSTS.**

380 ■ ~~INSPECTIONS:~~ Seller agrees to allow buyer's inspectors and testers reasonable access to the real property upon reasonable notice if the  
381 inspections or tests are reasonably necessary to satisfy contingencies in the offer. Seller acknowledges that certain inspections or tests may  
382 detect environmental contamination which may be required to be reported to the Wisconsin Department of Natural Resources.

Page 6 of 6, WB-6

383 ■ **LEASED PROPERTY:** If ~~the real the property~~ Real Estate included in the list price is currently leased ~~to third parties~~ and ~~the~~ lease(s) will  
384 extend beyond closing, Seller shall assign Seller's rights under the lease(s) and transfer all security deposits and prepaid rents ~~(subject to~~  
385 ~~agreed-upon prorations)~~ thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by  
386 tenants. **CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the lease(s) unless**  
387 **released by tenants.**

388 ■ **ADDITIONAL PROVISIONS:** ~~Notice: You may obtain information about the sex offender registry and persons registered with the registry by~~  
389 ~~contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by phone at 8772340085.~~

390 \_\_\_\_\_  
391 \_\_\_\_\_  
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396 \_\_\_\_\_  
397 \_\_\_\_\_

398 ■ **ADDENDA:** The attached \_\_\_\_\_ is/are made part of this Listing.

399 ■ **TERM OF THE CONTRACT:** ~~F~~rom the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ up to  
400 and including midnight of the \_\_\_\_\_ day of \_\_\_\_\_,

401 **CAUTION: IF SIGNED, THIS LISTING CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BROKERS MAY PROVIDE A**  
402 **GENERAL EXPLANATION OF THE PROVISIONS OF THE LISTING BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR**  
403 **OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS LISTING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL**  
404 **ADVICE IS NEEDED. A LISTING FOR LEASE ALSO MUST BE ENTERED INTO IF BROKER IS TO BE AUTHORIZED TO PROCURE**  
405 **TENANTS.**

406 Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
407 All persons signing below on behalf of a Seller Entity represent that they have proper legal authority to sign for and bind the Entity.

407 Seller Entity Name (if any):

408 (x)  
409 Authorized Signature ▲ Print Name & Title Here ► Date ▲

410 (x)  
411 Authorized Signature ▲ Print Name & Title Here ► Date ▲

412 (x)  
413 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

414 (x)  
415 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

416 Seller Entity Name (if any):

417 (x)  
418 Authorized Signature ▲ Print Name & Title Here ► Date ▲

419 (x)  
420 Authorized Signature ▲ Print Name & Title Here ► Date ▲

421 (x)  
422 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

423 (x)  
424 Individual Seller's Signature ▲ Print Name Title Here ► Date ▲

425 (x)  
426 Agent for Broker ▲ Print Name Here: ► Broker/Firm Name ▲ Date ▲



◆ General Provisions: The draft proposes to shorten this so that it becomes introductory language identifying the buyer. The line for the Buyer's name should be lengthened. Other comments or other suggestions?

The Buyer, \_\_\_\_\_, offers to purchase the Assets of the Business on the following terms:

◆ Earnest Money: The draft proposes to modify the language so that it matches the commercial offer. Other comments or other suggestions?

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

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

~~-. The balance of purchase price will be paid in cash or equivalent at closing unless otherwise provided below.~~

◆ Real Property Included in Purchase Price, Additional Property Included in Purchase Price: The draft proposes to delete these sections in the current WB-16 and replace them with sections like those in the WB-6 as far as the property description and associated definitions (Assets, Real Estate) regarding what is included in the purchase price.

■ INCLUDED IN PURCHASE PRICE: Seller is including in the purchase price (unless excluded at lines xx-xx) the Assets of the Business including all goodwill, stock-in-trade, trade fixtures, Fixtures (if interest in Real Estate is included), accounts receivable, all Business Personal Property, the interest in Real Estate (if included on lines xx-xx), and the following additional property

\_\_\_\_\_ [STRIKE AND COMPLETE AS APPLICABLE] (hereinafter collectively the "Assets").

Seller shall convey Business Personal Property and any other personal property by Bill of Sale or

\_\_\_\_\_ free and clear of all liens and encumbrances except

■ INTEREST IN REAL ESTATE [CHECK BOX ON LINE XX OR XX, AS APPLICABLE]:

NO INTEREST IN REAL ESTATE INCLUDED IN PURCHASE PRICE

DESCRIPTION OF INTEREST IN REAL ESTATE INCLUDED IN PURCHASE PRICE:

Street address is:

in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, Wisconsin (the "Real Estate").

The Real Estate is owned by: \_\_\_\_\_.

The Real Estate is leased to: \_\_\_\_\_.

The interest in the Real Estate included in the purchase price is:  ownership  leasehold  assignment of existing lease  other \_\_\_\_\_ . Insert any additional description, including further description of the type of interest in the Real Estate that is included in purchase price, at lines xxx-xxx or attach as an addendum per line xxx.

◆ Items Not Included in the Purchase Price: the first thing that has been suggested in the draft is to take the language that says:

If stock-in-trade or accounts receivable are purchased, the purchase price shall be based on the following terms and costs:

(a) Stock-in-Trade \_\_\_\_\_

(b) Accounts Receivable \_\_\_\_\_

This language was moved in the draft so it comes at the end of the INCLUDED IN PURCHASE PRICE section. The business practitioners indicated that the type of information that might be inserted here may relate to whether items are working, reasonable wear, merchantable, prepaids, gift cards, etc.

In addition, the draft language pertaining to items not included has been modified in the draft to incorporate elements of the WB-6 business listing and the WB-15 commercial offer with the result as follows:

NOT INCLUDED IN THE PURCHASE PRICE:

**CAUTION: If Real Estate is included, identify any Fixtures (see lines xxx-xxx) to be excluded by Seller or which are rented and will continue to be owned by the lessor.**

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

Does this make sense? Should there be a reminder to exclude tenants' trade fixtures? Other ideas?

◆ **Acceptance and Binding Acceptance:** the current WB-16 does not appear to have an acceptance section (acceptance is a definition) but does have a binding acceptance section. The draft inserts both (and the optional provisions lines as well) from the WB-15 Commercial Offer. Also note that this draft will attempt to track the general sequence of the items in the WB-15 to the greatest extent possible.

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

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

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

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

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

◆ **Delivery of Documents and Written Notices:** the draft takes the section that was placed in the WB-6 business listing and incorporates it here, as follows:

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

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

Seller's recipient for delivery (optional): \_\_\_\_\_

Buyer's recipient for delivery (optional): \_\_\_\_\_

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

Seller: (\_\_\_\_\_) \_\_\_\_\_ Buyer: (\_\_\_\_\_) \_\_\_\_\_

(3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or

xx, for delivery to the Party's delivery address at line xx or xx.

(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 recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx or xx.

Delivery address for Seller: \_\_\_\_\_

Delivery address for Buyer: \_\_\_\_\_

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

E-Mail address for Seller: \_\_\_\_\_

E-Mail address for Buyer: \_\_\_\_\_

[We will take a second look at whether there is a need for the consumer electronic consent language in the E-mail delivery section and report back if it may be able to be removed.]

◆ Personal Delivery/Actual Receipt: this section has been copied from the WB-15 commercial offer and placed immediately following the Delivery section:

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

◆ Transfer of Legal Possession: below is the section that appears in the current business offer. Is this section needed? The second sentence is covered in the draft in the Included in Purchase Price section.

**TRANSFER OF LEGAL POSSESSION** Legal possession of the Business and all included property shall be delivered to Buyer at the time of closing. Business personal property included in purchase price will be transferred by bill of sale or \_\_\_\_\_  
\_\_\_\_\_. *NOTE: If real property is being leased see lines 134 - 144.*

The WRA Committee recommends that the concept of the first sentence be moved into the Closing section, that the second sentence be eliminated because it duplicates language in the INCLUDED IN PURCHASE PRICE section, and that the reference to the Leased Property section be moved into the INTEREST IN REAL ESTATE section. One suggestion: at the end of the line stating "The Real Estate is leased to ..." it might say "(see lines xxx-xxx)." We may come back to considering whether that Leased Property section might be best moved, but that may have to wait until we are further into this offer.

◆ Place of Closing: in the draft this language is modified to conform to the verbiage in the WB-15 commercial offer (and the other offers):

**PLACE OF CLOSING** This transaction is to be closed ~~at the place designated by Buyer's lender or \_\_\_\_\_~~  
~~\_\_\_\_\_ no later than \_\_\_\_\_,~~  
at the place selected by Seller, unless otherwise agreed by the Parties unless another date or place is agreed to in writing.

The WRA Committee would suggest adding a sentence to this section that says: "Legal possession of the Business and all included property shall be delivered to Buyer at the time of closing."

◆ Closing Prorations: the section from the WB-15 has been inserted in place of the language now in the current WB-16:

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

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

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

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

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

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

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 known, multiplied by current mill rate (current means as of the date of closing)

\_\_\_\_\_.

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

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 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 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 bill. Buyer and Seller agree this is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real estate brokers in this transaction.

◆ **Business and Property Condition Provisions:** In the draft the REPRESENTATIONS REGARDING BUSINESS, INCLUDED PROPERTY AND THE TRANSACTION subsection has been modified to reflect some of the changes made in the WB-15 commercial offer, as follows:

■ REPRESENTATIONS REGARDING BUSINESS, INCLUDED PROPERTY AND THE TRANSACTION: Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of conditions affecting the Business, included real or personal property or the transaction (as defined at lines 253 to 302) other than those identified in Seller's disclosure report dated \_\_\_\_\_ and Real Estate Condition Report, if applicable, dated \_\_\_\_\_, which was/were received by Buyer prior to Buyer signing this Offer and which is/are made a part of this offer by reference COMPLETE DATES OR STRIKE AS APPLICABLE and \_\_\_\_\_.

[INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S)].

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

In the existing WB-16 there is a definition for "conditions affecting the Business, included property or the transaction." Other than the fact that we would use initial caps as is done in the other revised forms for defined terms, what exactly is the best name for this term? How about "Conditions Affecting the Business, Assets or Transaction?"

The business practitioners on the WRA Committee suggest that this section be restructured to have a list of check boxes for the various disclosure reports that may be involved. On preliminary possibility might be something like this:

■ REPRESENTATIONS REGARDING BUSINESS, ~~INCLUDED PROPERTY~~ ASSETS AND ~~THE~~ TRANSACTION: Seller represents to Buyer that as of the date of acceptance Seller has no notice or

knowledge of ~~C~~onditions ~~A~~ffecting the Business, ~~included real or personal property~~ Assets or the Transaction (as defined at lines ~~253-xxx~~ to ~~302-xxx~~) other than those identified in Seller's disclosure report(s) [CHECK AND INSERT DATES AS APPLICABLE]:

- Seller disclosure report (commercial or business real estate) dated \_\_\_\_\_
- Real Estate Condition Report (1-4 dwelling units ) dated \_\_\_\_\_ and Real Estate Condition
- Report, if applicable, Vacant Land Disclosure Report (no buildings) dated \_\_\_\_\_
- Business disclosures dated \_\_\_\_\_
- Other: \_\_\_\_\_ (specify) dated \_\_\_\_\_

which was/were received by Buyer prior to Buyer signing this Offer and which is/are made a part of this offer by reference COMPLETE DATES OR STRIKE AS APPLICABLE and \_\_\_\_\_

\_\_\_\_ [INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S)].

**CAUTION: If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. § 709.03 may be required. If the Property does not include any buildings, a Vacant Land Disclosure Report containing the disclosures provided in Wis. Stat. § 709.033 may be required. Buyer may have rescission rights per Wis. Stat. § 709.05. A commercial disclosure report for commercial Real Estate may be needed as well as business disclosures regarding the Business. More than one report may be necessary. If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in Wis. Stat. § 709.03 may be required. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied the Property). Buyer may have rescission rights per Wis. Stat. § 709.05.**

◆ Business Operation: In the draft the BUSINESS OPERATION subsection has been left as is. It is an important statement. Are we aware of any reason to change or add to this?

◆ Property Damage Between Acceptance and Closing: In the draft the PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING subsection is modified where appropriate to reflect the wording used in the WB-15 and the other offers, and the WB-16 terminology. This draft refers to property that may be damaged as "the Real Estate or Business Personal Property." Would it be better to say instead just "Assets?"

■ PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING: Seller shall maintain ~~all real and business personal property included in this Offer~~ the Assets until the earlier of closing or occupancy ~~by of~~ Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. -If, prior to the earlier of closing or occupancy by Buyer, ~~the included Real Estate or Business Personal Property~~ is damaged in an amount of not more than five per cent (5%) of the purchase price, Seller shall be obligated to ~~restore~~ repair the damaged property and restore it to the same condition that is was in on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. -If Seller is unable to restore the damaged property, Seller shall promptly notify Buyer in writing and this Offer may be canceled at the option of the Buyer. -If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be canceled at the option of Buyer. -Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to any insurance proceeds relating to the damaged property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, ~~the any~~ insurance proceeds shall be held in trust for the sole purpose of restoring the Property Assets.

◆ Inspections: For the INSPECTIONS subsection, the draft takes the INSPECTIONS AND TESTING provision from the WB-15 and attempts to make appropriate modifications (Assets in place of Property), as shown below:

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

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

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

◆ Pre-Closing Inspection: For the PRE-CLOSING INSPECTION subsection, this has been changed in the draft to match the similar section in the WB-15 Commercial Offer:

**BUYER’S PRE-CLOSING WALK-THROUGH** Within 3 days prior to closing, as agreed by the Parties, at a reasonable time pre-approved by Seller or Seller’s agent, Buyer shall have the right to walk through the Property Assets to determine that there has been no significant change in the condition of the Property Assets, except for 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 to by the Parties.

The term “walk-through” may not work in a business transaction but the intent in the prior offers was to avoid the word “inspect” to make sure that the buyer does not get the idea that the buyer can have another inspection 3 days before closing. Are there ideas for better terminology? How about “view?”

Also the business practitioners indicated that this is important but can be very tricky if the situation involves walking through an ongoing business with employees at work, etc. There may be confidentiality concerns, for instance. Accordingly, they suggest qualifying this provision “as agreed by the Parties” as shown above.

◆ Property Improvement, Development or Change of Use: Below is the PROPERTY IMPROVEMENT, DEVELOPMENT OR CHANGE OF USE subsection.

■ PROPERTY IMPROVEMENT, DEVELOPMENT OR CHANGE OF USE: If Buyer contemplates improving, developing or changing the use of the Business or Real property Estate sold by this Offer, Buyer may need to address municipal and zoning ordinances, recorded building and use restrictions, covenants and easements which may prohibit some improvements or uses. The need for building permits, zoning variances, environmental audits, etc. may need to be investigated to determine feasibility of improvements, development or use changes for the Business or real property sold by this Offer. Contingencies for investigation of these issues may be added to this Offer. See lines 469-xxx-472-xxx or 449xxx. If plant closings or mass layoffs will occur as a result of this Offer the Parties should review federal and state plant closing laws.

Perhaps these issues would be better addressed with provisions like the Proposed Use Contingencies from the WB-15?

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**WB-15 Changes (Plain) WB-16 OFFER TO PURCHASE – BUSINESS WITH REAL ESTATE**

**OFFER TO PURCHASE FOR SALE OF ASSETS ONLY. CONSULT APPROPRIATE ADVISORS FOR  
TAX, LICENSING, LIABILITY OR RELATED QUESTIONS.**

1 LICENSEE DRAFTING THIS OFFER ON \_\_\_\_\_ [DATE] IS (AGENT OF  
2 BUYER) (AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) [STRIKE THOSE NOT APPLICABLE]

3 Business Name: \_\_\_\_\_

4 Type of Business Entity (e.g., corporation, LLC, partnership, sole proprietorship, etc.): \_\_\_\_\_

5 Business Description: \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_ (Lines 3-8 hereinafter referred to as the "Business")

9 Insert additional description, if any, at lines xxx-xxx or attach as an addendum per line xxx.

10 **GENERAL PROVISIONS** The Buyer, \_\_\_\_\_, offers to purchase  
11 the Assets of the Business on the following terms:

12 ■ PURCHASE PRICE: \_\_\_\_\_  
13 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

14 ■ EARNEST MONEY of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be mailed, or  
15 commercially or personally delivered within \_\_\_\_\_ days of acceptance to listing broker or  
16 \_\_\_\_\_.

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

18 ■ INCLUDED IN PURCHASE PRICE: Seller is including in the purchase price (unless excluded at lines xx-xx) the Assets of the Business  
19 including all goodwill, stock-in-trade, trade fixtures, Fixtures (if interest in Real Estate is included), accounts receivable, all Business Personal  
20 Property, the interest in Real Estate (if included on lines xx-xx), and the following additional property \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_ [STRIKE AND COMPLETE AS APPLICABLE] (hereinafter collectively the "Assets").

23 Seller shall convey Business Personal Property and any other personal property by Bill of Sale or \_\_\_\_\_

24 \_\_\_\_\_, free and clear of all liens and encumbrances except \_\_\_\_\_

25 \_\_\_\_\_.

26 If stock-in-trade or accounts receivable are purchased, the purchase price shall be based on the following terms and costs:

27 (a) Stock-in-Trade \_\_\_\_\_

28 \_\_\_\_\_

29 (b) Accounts Receivable \_\_\_\_\_

30 \_\_\_\_\_

31 ■ INTEREST IN REAL ESTATE [CHECK BOX ON LINE XX OR XX, AS APPLICABLE]:

32  NO INTEREST IN REAL ESTATE INCLUDED IN PURCHASE PRICE

33  DESCRIPTION OF INTEREST IN REAL ESTATE INCLUDED IN PURCHASE PRICE:

34 Street address is: \_\_\_\_\_ in the \_\_\_\_\_

35 \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, Wisconsin (the "Real Estate").

36 The Real Estate is owned by: \_\_\_\_\_.

37 The Real Estate is leased to: \_\_\_\_\_.

38 The interest in the Real Estate included in the purchase price is:  ownership  leasehold  assignment of existing lease  other  
39 \_\_\_\_\_.

40 Insert any additional description, including further description of the type of  
41 interest in the Real Estate that is included in purchase price, at lines xxx-xxx or attach as an addendum per line xxx.

42 ■ NOT INCLUDED IN THE PURCHASE PRICE: \_\_\_\_\_

43 \_\_\_\_\_

44 \_\_\_\_\_

44 **CAUTION: If Real Estate is included, identify any Fixtures (see lines xxx-xxx) to be excluded by Seller or which are rented  
45 and will continue to be owned by the lessor.**

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

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

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

51 **[BINDING ACCEPTANCE]** This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or  
52 before \_\_\_\_\_.

53 Seller may keep the Assets on the market  
54 and accept secondary offers after binding acceptance of this Offer.

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

55 **[OPTIONAL PROVISIONS]** Terms of this Offer that are preceded by an OPEN BOX (  ) are part of this offer ONLY if the box is  
56 marked such as with an "X." They are not part of this offer if marked "N/A" or are left blank.

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

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

61 Seller's recipient for delivery (optional): \_\_\_\_\_

62 Buyer's recipient for delivery (optional): \_\_\_\_\_

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

64 Seller: (\_\_\_\_\_) \_\_\_\_\_ Buyer: (\_\_\_\_\_) \_\_\_\_\_

65 (3) **Commercial Delivery:** depositing the document or written notice fees prepaid or charged to an account with a commercial delivery  
66 service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's  
67 delivery address at line xx or xx.

68 (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  
69 Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx or xx.

70 Delivery address for Seller: \_\_\_\_\_

71 Delivery address for Buyer: \_\_\_\_\_

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

76 E-Mail address for Seller: \_\_\_\_\_

77 E-Mail address for Buyer: \_\_\_\_\_

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

80 **[TRANSFER OF LEGAL POSSESSION]** Legal possession of the Business and all included property shall be delivered to Buyer at  
81 the time of closing. Business personal property included in purchase price will be transferred by bill of sale or \_\_\_\_\_

82 \_\_\_\_\_ . **NOTE: If real property is being leased see lines 134 - 144.**

83 **[CLOSING]** This transaction is to be closed no later than \_\_\_\_\_

84 \_\_\_\_\_ at the place selected by Seller, unless otherwise agreed by the Parties in writing.

85 **[CLOSING PRORATIONS]** The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes,  
86 rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, fuel and \_\_\_\_\_

87 \_\_\_\_\_ .

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

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

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

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

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

94  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  
95 known, multiplied by current mill rate (current means as of the date of closing)

96  \_\_\_\_\_ .

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

100  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  
101 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  
102 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  
103 bill. Buyer and Seller agree this is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real  
104 estate brokers in this transaction.

105 **[BUSINESS AND PROPERTY CONDITION PROVISIONS]**

106 ■ **REPRESENTATIONS REGARDING BUSINESS, INCLUDED PROPERTY AND THE TRANSACTION:** Seller represents to Buyer that  
107 as of the date of acceptance Seller has no notice or knowledge of **conditions affecting the Business, included real or personal property or the**  
108 **transaction(as defined at lines 253 to 302)** other than those identified in Seller's disclosure report dated \_\_\_\_\_ and Real Estate  
109 Condition Report, if applicable, dated \_\_\_\_\_, which was/were received by Buyer prior to Buyer signing this  
110 Offer and which is/are made a part of this offer by reference **[COMPLETE DATES OR STRIKE AS APPLICABLE]** and  
111 \_\_\_\_\_

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

113 **CAUTION: If the Property includes 1-4 dwelling units, a Real Estate Condition Report containing the disclosures provided in**  
114 **Wis. Stat. § 709.03 may be required. Excluded from this requirement are sales of property that has never been inhabited,**

115 sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal  
116 representatives who have never occupied the Property). Buyer may have rescission rights per Wis. Stat. § 709.05.

117 ■ **BUSINESS OPERATION:** Seller shall continue to conduct the Business in a regular and normal manner and shall use Seller's best  
118 efforts to keep available the services of Seller's present employees and to preserve the goodwill of Seller's suppliers, customers and  
119 others having business relations with Seller.

120 ■ **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING:** Seller shall maintain the Assets until the earlier of closing or  
121 occupancy of Buyer in materially the same condition as of the date of acceptance of this Offer, except for ordinary wear and tear. If,  
122 prior to the earlier of closing or occupancy by Buyer, the Real Estate or Business Personal Property is damaged in an amount of not  
123 more than five per cent (5%) of the purchase price, Seller shall be obligated to repair the damaged property and restore it to the  
124 same condition that it was in on the day of this Offer. No later than closing, Seller shall provide Buyer with lien waivers for all lienable  
125 repairs and restoration. If Seller is unable to repair and restore the damaged property, Seller shall promptly notify Buyer in writing and  
126 this Offer may be canceled at the option of the Buyer. If the damage shall exceed such sum, Seller shall promptly notify Buyer in  
127 writing of the damage and this Offer may be canceled at the option of Buyer. Should Buyer elect to carry out this Offer despite such  
128 damage, Buyer shall be entitled to any insurance proceeds relating to the damaged property, plus a credit towards the purchase  
129 price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a  
130 mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring the Assets.

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

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

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

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

150 ■ **PROPERTY IMPROVEMENT, DEVELOPMENT OR CHANGE OF USE:** If Buyer contemplates improving, developing or changing  
151 the use of the Business or real property sold by this Offer, Buyer may need to address municipal and zoning ordinances, recorded  
152 building and use restrictions, covenants and easements which may prohibit some improvements or uses. The need for building  
153 permits, zoning variances, environmental audits, etc. may need to be investigated to determine feasibility of improvements,  
154 development or use changes for the Business or real property sold by this Offer. Contingencies for investigation of these issues may  
155 be added to this Offer. See lines 169 -172 or 419. If plant closings or mass layoffs will occur as a result of this Offer the Parties  
156 should review federal and state plant closing laws.

157 ■ **PROPERTY DIMENSIONS AND SURVEYS:** Buyer and Seller acknowledge that any real property, building or room dimensions,  
158 or total acreage or building square footage figures, provided to Buyer or Seller, may be approximate because of rounding or other  
159 reasons, unless verified by survey or other means. Buyer and Seller also acknowledge that there are various formulas used to  
160 calculate total square footage of buildings and that total square footage figures will vary dependent upon the formula used.  
161 CAUTION: Buyer and Seller should verify total square footage formula, real property, building or room dimensions, and total acreage  
162 or square footage figures, if these figures are material.

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

166 If Buyer defaults, Seller may:

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

170 If Seller defaults, Buyer may:

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

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

174 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
175 discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of  
176 the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those  
177 disputes covered by the arbitration agreement. NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE  
178 CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL  
179 EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS  
180 CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN  
181 ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

182 **ENTIRE AGREEMENT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding  
183 the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and inures to the  
184 benefit of the parties to this Offer and their successors in interest. **Note: Consult appropriate advisors for tax, license or other**  
185 **questions.**

186 **PROPERTY ADDRESS:** \_\_\_\_\_

187  **ENVIRONMENTAL EVALUATION/INSPECTION CONTINGENCY:** This Offer is contingent upon: **CHECK THOSE THAT APPLY**

188  A qualified independent environmental consultant of Buyer's choice conducting an environmental site assessment (see lines  
189 303-315) of the Real Property, at (Buyer's)(Seller's) expense **STRIKE ONE**, which discloses no environmental defects as defined at  
190 lines 316-320.

191  A qualified independent inspector of Buyer's choice conducting an inspection of the Real Property, and \_\_\_\_\_  
192 \_\_\_\_\_, at (Buyer's)(Seller's) **STRIKE ONE** expense, which discloses no defects as defined at lines 330-333.

193 This contingency shall be deemed satisfied unless Buyer, within \_\_\_ days of acceptance, delivers to Seller a copy of the  
194 environmental site assessment / inspection report(s) and a written notice listing the defect(s) identified in the environmental site  
195 assessment /inspection report(s) to which Buyer objects. Defects do not include conditions the nature and extent of which Buyer had  
196 actual knowledge or written notice before signing the Offer. Buyer agrees to deliver a copy of the report and notice to listing broker, if  
197 Real Property is listed, promptly upon delivery to Seller.

198 **LEASED PROPERTY** For any Real Property included in the purchase price which is currently leased and if leases extend beyond  
199 closing, Seller shall assign Seller's rights under the lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer  
200 at closing. The terms of the (written) (oral) **STRIKE ONE** lease(s), if any, are \_\_\_\_\_

201 \_\_\_\_\_.

202  If the real property occupied by the Business is owned by Seller, but not sold by this Offer, Seller: **Check ONE**

203  agrees to lease the real property to Buyer on the following terms: \_\_\_\_\_

204 \_\_\_\_\_.

205  agrees to lease the real property according to the terms of the lease made a part of this agreement per line 419.

206 If the real property occupied by the Business is owned by a third party and is currently leased to Seller, then **CHECK ONE**

207  Seller agrees to assign its interest in the Lease to Buyer, if assignable. (See lines 134-137.)

208  Buyer will not accept an assignment of Seller's interest in the Lease.

209 **DOCUMENT REVIEW/RECEIPT CONTINGENCY** This Offer is contingent upon Buyer, at Buyer's expense, being able to obtain the  
210 following within the number of days of acceptance specified in each item below (consider addressing licenses, permits, etc.)

211  \_\_\_\_\_ (\_\_\_ days).

212  \_\_\_\_\_ (\_\_\_ days).

213  \_\_\_\_\_ (\_\_\_ days).

214 This Offer is contingent upon Seller delivering the following documents to Buyer within the number of days of acceptance specified in  
215 each item below:

216  Documents showing the sale of the Business and included real estate has been properly authorized, if Seller is a business entity (\_\_\_ days).

217  A complete inventory of all included business personal property which shall be consistent with all prior representations (\_\_\_  
218 days).

219  Uniform Commercial Code lien search as to the business personal property included in the purchase price, showing the  
220 business personal property to be free and clear of all liens, other than liens to be released prior to or from the proceeds of closing  
221 (\_\_\_ days).

222  Copies of all leases affecting the Business or business personal property, which shall be consistent with all prior  
223 representations (\_\_\_ days).

224  Estimated principal balance of accounts receivable and payable which shall be consistent with all prior representations (\_\_\_  
225 days).

226  Copy of profit and loss statements, balance sheets, business books and records, and income tax returns for the following  
227 years \_\_\_\_\_ which shall be consistent with all prior representations  
228 (\_\_\_ days).

229  Copies of all current licenses held by Business which indicate that Business holds all licenses required for current operations  
230 (\_\_\_ days).

231  Copies of franchise agreements, if any, which shall be consistent with all prior representations (\_\_\_ days).

232  Any agreements restricting Seller from competing with Buyer after closing which shall be consistent with all prior  
233 representations (\_\_\_ days).

234  Other \_\_\_\_\_  
235 This document review/receipt contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of the earlier of: 1) receipt  
236 of the final document to be obtained/delivered or 2) the latter of the deadlines for obtaining or delivery of the documents, delivers to  
237 Seller a written notice indicating that this contingency has not been satisfied. The notice shall identify which document(s) have not  
238 been timely obtained/delivered or do not meet the standard set forth for the document(s). Buyer shall keep all information reviewed  
239 confidential until closing. If this Offer does not close Buyer shall promptly return all documents received from Seller.

240 **ADDITIONAL PROVISIONS** \_\_\_\_\_  
241 \_\_\_\_\_  
242 \_\_\_\_\_

243 \_\_\_\_\_  
244 **SALES TAX** Sales tax, if any, shall be paid by Seller. Seller agrees to surrender Seller's sales permit in a timely manner. In  
245 compliance with § 77.52(18), Wis. Stats., Seller agrees to escrow the sum of \$ \_\_\_\_\_ out of  
246 the purchase price to be held by \_\_\_\_\_  
247 \_\_\_\_\_ and to be released to Seller when Seller provides the escrow agent with

248 a receipt from the Department of Revenue that any sales tax due and owing has been paid, or a certificate that no amount is due.  
249 **REAL PROPERTY TITLE** Upon payment of the purchase price, Seller shall convey the real property by warranty deed (or other  
250 conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and  
251 agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use  
252 restrictions and covenants, general taxes levied in the year of closing and \_\_\_\_\_ (provided none  
253 of the foregoing prohibit present use of the real property), which constitutes merchantable title for purposes of this transaction. Seller  
254 further agrees to complete and execute the documents necessary to record the conveyance. **WARNING: Municipal and zoning  
255 ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses  
256 and therefore should be reviewed, particularly if Buyer contemplates making improvements to Property or a use other than  
257 the current use.**

258 ■ **FORM OF TITLE EVIDENCE:** Seller shall give evidence of title to the real property in the form of an owner's policy of title  
259 insurance in the amount of the value of the real property on a current ALTA form issued by an insurer licensed to write title insurance  
260 in Wisconsin. **CAUTION: MODIFY AMOUNT OF OWNER'S POLICY OF TITLE INSURANCE IF TITLE POLICY WILL INSURE  
261 TITLE TO PROPERTY OTHER THAN REAL PROPERTY. CAUTION: IF TITLE EVIDENCE WILL BE GIVEN BY ABSTRACT,  
262 STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**

263 ■ **PROVISION OF MERCHANTABLE TITLE:** Seller shall pay all costs of providing title evidence. For purposes of closing, title  
264 evidence shall be acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than  
265 3 business days before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence  
266 to be merchantable, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements  
267 and exceptions, as appropriate. **CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE  
268 COMMITMENT PRIOR TO CLOSING OR A "GAP ENDORSEMENT" WHICH WOULD INSURE OVER LIENS FILED BETWEEN  
269 THE EFFECTIVE DATE OF THE COMMITMENT AND THE DATE THE DEED IS RECORDED.**

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

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

283 **BULK SALES** Seller shall comply with the Bulk Transfers Law (Chapter 406, Wis. Stats.), if applicable. The delivery of a fully  
284 executed copy of this Offer to Seller shall constitute a written demand for a list of creditors and for the preparation of a schedule of  
285 the personal property transferred, as required by the Bulk Transfers Law.

286 **Rental Weatherization** Unless otherwise provided this transaction is exempt from State of Wisconsin Rental Weatherization  
287 Standards (Wisconsin Administrative Code, Comm 67). If not exempt, address which Party is responsible for compliance, including  
288 all costs (See lines 169-172 or 419). If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at  
289 closing.

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

293 the Offer. CAUTION: Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the  
294 Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special disbursement agreement.  
295 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after  
296 clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At  
297 closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall  
298 be disbursed according to a written disbursement agreement signed by all Parties to this Offer (Note: Wis. Adm. Code § RL  
299 18.09(1)(b) provides that an offer to purchase is not a written disbursement agreement pursuant to which the broker may disburse).  
300 If said disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse  
301 the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into  
302 a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other  
303 disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader  
304 action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to  
305 disbursement.

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

#### 318 **DEFINITIONS**

319 ■ **ACCEPTANCE:** Acceptance occurs when all Buyers and Sellers have signed an identical copy of the Offer, including signatures  
320 on separate but identical copies of the Offer. CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider  
321 whether short term deadlines running from acceptance provide adequate time for both binding acceptance and performance.

322 ■ **BUSINESS PERSONAL PROPERTY:** "Business personal property" is defined as all tangible and intangible personal property and  
323 rights in personal property owned by Seller and used in the business as of the date of this Offer, including furniture, trade fixtures and  
324 equipment, tools used in business, telephone numbers and listings, if transferable, customer lists, trade names, business records,  
325 supplies, leases, advance lease deposits, customer deposits, signs, all other personal property used in Business, and if transferable,  
326 all permits, special licenses and franchises, except those assets disposed of in the ordinary course of business or as permitted by  
327 this Offer.

#### 328 ■ **CONDITIONS AFFECTING THE BUSINESS, INCLUDED PROPERTY OR THE TRANSACTION**

329 A "condition affecting the Business, included property or the transaction" is defined as follows:

- 330 (a) Planned or commenced public improvements which may result in special assessments or otherwise materially affect the  
331 Business or included property, the present use of the Business or included property sold by this Offer;
- 332 (b) Government agency or court order requiring repair, alteration or correction of any existing condition;
- 333 (c) Material violation of the Americans with Disabilities Act (ADA) or other state or local laws requiring minimum accessibility for  
334 persons with disabilities. Note: a Building owner's or tenant's obligations under the ADA may vary dependant upon the financial or  
335 other  
336 capabilities of the building owner or tenant;
- 337 (d) Completed or pending reassessment of the real property or business personal property sold by this Offer for tax purposes;
- 338 (e) Structural inadequacies which if not repaired will significantly shorten the expected normal life of the real property sold by this  
339 Offer;
- 340 (f) Any land division involving the real property sold by this Offer, for which required state or local approvals were not obtained;
- 341 (g) Construction or remodeling on the real property sold by this Offer for which required state or local approvals were not obtained;
- 342 (h) Any portion of the real property sold by this Offer being in a 100 year floodplain, a wetland or shoreland zoning area under local,  
343 state or federal regulations;
- 344 (i) That a structure which the Business occupies or which is located on the real property sold by this Offer is designated as a  
345 historic building or that any part of a structure which the Business occupies or the real property sold by this Offer is in a historic  
346 district;
- 347 (j) Material violations of environmental laws or other laws or agreements regulating the use of the Business or real property sold by  
348 this Offer;
- 349 (k) Conditions constituting a significant health or safety hazard for occupants of the Business or real property sold by this Offer;
- 350 (l) Material levels of hazardous substances located on the premises which the Business occupies or on the real property sold by  
351 this Offer or previous storage of material amounts of hazardous substances on the premises which the Business occupies or on the  
352 real property sold by this Offer;

353 (m) Material levels of medical or infectious waste located on the premises which the Business occupies or on the real property sold  
354 by this Offer or previous storage of material amounts of medical or infectious waste on the premises which the Business occupies or  
355 on the real property sold by this Offer;

356 (n) Underground storage tanks for storage of flammable or combustible liquids including but not limited to gasoline and heating oil  
357 on the premises which the Business occupies or on the real property sold by this Offer; NOTE: The Wisconsin Administrative Code  
358 contains registration and operation rules for such underground storage tanks.

359 (o) Underground or aboveground storage tanks for storage of flammable, combustible or hazardous materials including but not  
360 limited to gasoline and heating oil, which are currently or which were previously located on the premises which the Business  
361 occupies or on the real property sold by this Offer;

362 (p) High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the real  
363 property sold by this Offer;

364 (q) Any material defects in any of the equipment, appliances, business fixtures, fixtures, tools, furniture or other business personal  
365 property included in the transaction, and Seller further warrants that all will be in good working order on the day of closing;

366 (r) Any encumbrances on the Business, all integral parts thereof, or the included property being conveyed in conjunction with the  
367 Business, except as stated in this Offer and in any schedule attached to it;

368 (s) Any litigation, government proceeding or investigation in progress, threatened or in prospect against or related to the Business  
369 or the included property sold by this Offer;

370 (t) Any road change, road work or change in road access which would materially affect the present use or access to the Business  
371 or the real property included in this Listing.

372 (u) Any right granted to underlying lien holder(s) to accelerate the debtor's obligation by reason of the transfer of ownership of  
373 Business or other property included in the transaction, or any permission to transfer being required and not obtained;

374 (v) Any unpaid Business taxes such as: income; sales; payroll; Social Security; unemployment; or any other employer/employee  
375 taxes due and payable or accrued;

376 (w) A material failure of the financial statements, or schedules to the financial statements, to present the true and correct condition  
377 of the Business as of the date of the statements and schedules or a material change in the financial condition or operations of the  
378 Business since the date of the last financial statements and schedules provided by Seller, except for changes in the ordinary course  
379 of business which are not in the aggregate materially adverse;

380 (x) Other conditions or occurrences which would significantly reduce the value of the Business or included property to a  
381 reasonable person with knowledge of the nature and scope of the condition or occurrence.

382 ■ **ENVIRONMENTAL SITE ASSESSMENT:** An "environmental site assessment" ("Phase I Site Assessment" or equivalent)(see lines  
383 125-133 ) may include, but is not limited to: (1) an inspection of the real property; (2) a review of the ownership and use history of the  
384 real property, including a search of title records showing private ownership of the real property for a period of 80 years prior to the  
385 visual inspection; (3) a review of historic and recent aerial photographs of the real property, if available; (4) a review of environmental  
386 licenses, permits or orders issued with respect to the real property; (5) an evaluation of results of any environmental sampling and  
387 analysis that has been conducted on the real property; and (6) a review to determine if the real property is listed in any of the written  
388 compilations of sites or facilities considered to pose a threat to human health or the environment including the National Priorities List,  
389 the Department of Natural Resources' (DNR) registry of Abandoned Landfills, the DNR's Registry of Leaking Underground Storage  
390 Tanks, the DNR's most recent remedial response site evaluation report (including the Inventory of Sites and Facilities Which May  
391 Cause or Threaten to Cause Environmental Pollution). Any "environmental site assessment" performed under this Offer shall comply  
392 with generally recognized industry standards (e.g. current American Society of Testing and Materials "Standards for Environmental  
393 Site Assessments for Commercial Real Estate"), and state and federal guidelines, as applicable. **CAUTION: Unless otherwise**  
394 **agreed an "environmental site assessment" does not include subsurface testing of the soil or groundwater or other testing**  
395 **of the Property for environmental pollution.**

396 ■ **ENVIRONMENTAL DEFECT:**

397 An "environmental defect" is defined as a material violation of environmental laws, a material contingent liability affecting the Real  
398 Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous  
399 substances either on the Real Property, or presenting a significant risk of contaminating the Real Property, due to future migration  
400 from other properties.

401 ■ **FIXTURES:** A "Fixture" is an item of property, which is on the real property on the date of this Offer, which is physically attached  
402 to or so closely associated with land and improvements so as to be treated as part of the real estate, including, without limitation,  
403 physically attached items not easily removable without damage to the real property, items specifically adapted to the real property,  
404 and items customarily treated as fixtures. A "fixture" does not include trade fixtures owned by tenants of the real property. See Lines  
405 11-21.

406 ■ **INCLUDED PROPERTY:** "Included property" is defined as all business personal property (as defined at lines 247-251), real  
407 property and other property of any kind or an interest in any property of any kind which has been included in the purchase price (See  
408 lines 11-21).

409 ■ **INSPECTION:** An "inspection" is defined as an observation of the included property which does not include testing of the included  
410 property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are  
411 hereby authorized.

412 ■ **INSPECTION DEFECT:** An "inspection defect" is defined as a structural, mechanical or other condition that would have a  
413 significant adverse effect on the value of the Real Property; that would significantly impair the health and safety of future occupants of  
414 the Real Property; or that if not repaired, removed or replaced would significantly shorten or have a significantly adverse effect on the  
415 expected normal life of the Real Property.

416 ■ **TEST:** A "test" is defined as the taking of samples of materials such as soils, water or building materials from the included  
417 property and the laboratory or other analysis of these materials. Note: Any contingency authorizing such tests should specify the  
418 areas of the included property sold or leased pursuant to this Offer to be tested, the purpose of the test, (e.g. to determine the  
419 presence or absence of environmental contamination), any limitations on Buyer's testing and any other material terms of the  
420 contingency (e.g. Buyer's obligation to return the included property to its original condition). Seller acknowledges that certain  
421 inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural  
422 Resources.

423 **TIME IS OF THE ESSENCE** TIME IS OF THE ESSENCE as to all dates and deadlines in this Offer, including but not limited to:  
424 earnest money payment(s); binding acceptance; date of closing and contingency deadlines unless it is agreed that time is not of the  
425 essence for a specific date(s) or deadline(s) at lines 169-172, or in an addendum per line 419. If "Time is of the Essence" applies  
426 to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does not  
427 apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

428 **DATES AND DEADLINES** Deadlines expressed as a number of "days" from an event, such as acceptance, are calculated by  
429 excluding the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day.  
430 Deadlines expressed as a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin  
431 or Federal law, and other day designated by the President such that the postal service does not receive registered mail or make  
432 regular deliveries on that day. Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt  
433 of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a  
434 specific day of the calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

435 **ADDITIONAL FINANCING PROVISIONS**

436 ■ **LAND CONTRACT:** If this Offer provides for a land contract both Parties agree to execute a State Bar of Wisconsin Form 11  
437 Land Contract, the terms of which are incorporated into this Offer by reference. Prior to execution of the land contract Seller shall  
438 provide the same evidence of merchantable title as required above and written proof, at or before execution, that the total underlying  
439 indebtedness, if any, is not in excess of the proposed balance of the land contract, that the payments on the land contract are  
440 sufficient to meet all of the obligations of Seller on the underlying indebtedness, and that all creditors whose consent is required have  
441 consented to the land contract sale. Seller may terminate this Offer if creditor approval cannot be obtained. Seller may terminate  
442 this Offer if Buyer does not provide a written credit report which indicates that Buyer is credit worthy based upon reasonable  
443 underwriting standards within 15 days of acceptance. Buyer shall pay all costs of obtaining creditor approval and the credit report.  
444 Seller shall be responsible for preparation and the expense of preparation of all closing documentation, including the land contract.

445 ■ **LOAN COMMITMENT:** Buyer agrees to pay all customary financing costs (including closing fees), to apply for financing promptly,  
446 and to provide evidence of application promptly upon request by Seller. If Buyer qualifies for the financing described in this Offer or  
447 other financing acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the  
448 deadline for loan commitment at line 400. **Buyer's delivery of a copy of any written loan commitment (even if subject to  
449 conditions) shall satisfy the Buyer's financing contingency unless accompanied by a notice of unacceptability. CAUTION:  
450 BUYER, BUYER'S LENDER AND AGENTS OF BUYER OR SELLER SHOULD NOT DELIVER A LOAN COMMITMENT TO  
451 SELLER WITHOUT BUYER'S PRIOR APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.**

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

459 **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment, Seller may terminate this Offer if  
460 Seller delivers a written notice of termination to Buyer prior to Seller's actual receipt of a copy of Buyer's written loan commitment.

461 **SELLER FINANCING:** If this Offer provides for Seller financing, personal property transferred hereunder shall be subject to a chattel  
462 security agreement and lien rights under the Uniform Commercial Code in favor of Seller.

463 **NOTE: IF PURCHASE IS CONDITIONED ON BUYER OBTAINING FINANCING FOR OPERATIONS OR DEVELOPMENT  
464 CONSIDER ADDING A CONTINGENCY FOR THAT PURPOSE.**

465 **PROPERTY ADDRESS:**

466 **ALLOCATION OF PURCHASE PRICE** CHECK LINE 384 OR 392

467 The Parties agree to the following allocation of the purchase price:

468 Goodwill:.....	\$ _____
469 Stock-in-trade: .....	\$ _____
470 Accounts receivable:.....	\$ _____
471 Business personal property:.....	\$ _____

472 Real property: ..... \$ \_\_\_\_\_  
473 Other: ..... \$ \_\_\_\_\_  
474 Total \$ \_\_\_\_\_

475 The Parties shall agree on an allocation by the following deadline: (within \_\_\_\_ days of acceptance of the Offer)(\_\_\_\_\_  
476 , \_\_\_\_\_) **STRIKE AND COMPLETE AS APPLICABLE**. If the Parties cannot agree to an allocation by the deadline, the Parties  
477 shall submit to binding arbitration. The Parties will share any costs of arbitration equally. Allocation may take place after closing.

478 **CAUTION: Fair market value of the real property must be determined prior to closing to complete the transfer return per**  
479 **Wis. Stats. § 77.22. The Parties should consult accountants, legal counsel or other appropriate experts, as necessary.**

480  **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain: **CHECK APPLICABLE FINANCING**  
481 **BELOW**

482  land contract financing from Seller at closing as further described at lines 353-361 and 401-418.

483  a \_\_\_\_\_ **INSERT LOAN PROGRAM** (fixed) (adjustable) **STRIKE ONE**

484 rate first mortgage loan commitment as further described at lines 362-381 and 401-414, within \_\_\_\_ days of acceptance of this Offer.

485 The financing selected shall be in an amount of not less than \$\_\_\_\_\_ for a term of not less than \_\_\_\_\_

486 years, amortized over not less than \_\_\_\_\_ years. If the purchase price under this Offer is modified, the financed amount,

487 unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly

488 payments shall be adjusted as necessary to maintain the term and amortization stated above.

489 **IF FINANCING IS FIXED RATE** the annual rate of interest shall not exceed \_\_\_\_\_ % and monthly

490 payments of principal and interest shall not exceed \$\_\_\_\_\_.

491 **IF FINANCING IS ADJUSTABLE RATE** the initial annual interest rate shall not exceed \_\_\_\_\_ %. The initial interest rate

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

493 maximum interest rate during the mortgage term shall not exceed \_\_\_\_\_ %. Initial monthly payments of principal and

494 interest shall not exceed \$\_\_\_\_\_. Monthly payments of principal and interest may be

495 adjusted to reflect interest changes. Monthly payments may also include: \_\_\_\_\_. The

496 mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination fee in an amount not

497 to exceed \_\_\_\_\_ % of the loan.

498 **OTHER FINANCING TERMS:** \_\_\_\_\_

499 \_\_\_\_\_

500 **IF FINANCING IS BY LAND CONTRACT** \$\_\_\_\_\_ shall be paid at closing (in addition to earnest money). The

501 interest rate following payment default shall be \_\_\_\_\_ % , the default period shall be \_\_\_\_\_ days for payments and \_\_\_\_\_ days for

502 performance of any other obligations. Interest shall be calculated on a prepaid basis. Any amount may be prepaid on principal

503 without penalty at any time. Buyer understands that if the term of the land contract is shorter than the amortization period a balloon

504 payment will be due at the end of the term.

505 **ADDENDA** The attached \_\_\_\_\_ is/are made part of this Offer.

506 This Offer was drafted on \_\_\_\_\_ [date] by [Licensee and firm] \_\_\_\_\_.

507 **BROKER DRAFTING THIS OFFER ON \_\_\_\_\_ [DATE] IS AGENT OF (SELLER)(BUYER)(DUAL AGENT) **STRIKE ONE****

508 (x) \_\_\_\_\_

509 Buyer's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

510 (x) \_\_\_\_\_

511 Buyer's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

512 **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 9 of the above Offer. **(See lines 217-242)**

513 \_\_\_\_\_ Broker (By) \_\_\_\_\_

514 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE**

515 **CLOSING AND THE CONVEYANCE OF THE BUSINESS AND INCLUDED PROPERTY IN THIS OFFER. THE UNDERSIGNED**

516 **HEREBY AGREES TO CONVEY THE ABOVE-MENTIONED BUSINESS AND INCLUDED PROPERTY IN THIS OFFER ON THE**

517 **TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**

518 (x) \_\_\_\_\_

519 Seller's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

520 (x) \_\_\_\_\_

521 Seller's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

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

523 THIS OFFER IS REJECTED \_\_\_\_\_ THIS OFFER IS COUNTERED [See attached counter] \_\_\_\_\_  
524 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

**WB-15 Changes in Tracking WB-16 OFFER TO PURCHASE – BUSINESS WITH REAL ESTATE**

~~TO BE USED~~ **OFFER TO PURCHASE** FOR SALE OF ASSETS ONLY. CONSULT APPROPRIATE ADVISORS FOR TAX, LICENSING, LIABILITY OR OTHER RELATED QUESTIONS.

1 **LICENSEE DRAFTING THIS OFFER ON** \_\_\_\_\_ **[DATE] IS (AGENT OF**  
2 **BUYER) (AGENT OF SELLER/LISTING BROKER) (AGENT OF BUYER AND SELLER) [STRIKE THOSE NOT APPLICABLE]**

3 Business Name: \_\_\_\_\_

4 Type of Business Entity (e.g., corporation, LLC, partnership, sole proprietorship, etc.): \_\_\_\_\_

5 Business Description: \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_ (Lines 3-8 hereinafter referred to as the "Business")

9 Insert additional description, if any, at lines xxx-xxx or attach as an addendum per line xxx.

10 **GENERAL PROVISIONS** The Buyer, \_\_\_\_\_, offers to purchase  
11 the Assets of the Business ~~known as~~ \_\_\_\_\_  
12 **Identify business name, type of business entity and type of business** on the following terms:

13 ■ **PURCHASE PRICE:** \_\_\_\_\_  
14 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

15 ■ **EARNEST MONEY** of \$ \_\_\_\_\_ accompanies this Offer and earnest money of \$ \_\_\_\_\_ will be mailed, or  
16 commercially or personally delivered ~~paid~~ within \_\_\_\_\_ days of acceptance to listing broker or  
17 \_\_\_\_\_.

18 ■ ~~THE BALANCE OF PURCHASE PRICE. The balance of purchase price~~ will be paid in cash or equivalent at closing unless otherwise  
19 provided below.

20 ■ **INCLUDED IN PURCHASE PRICE:** Seller is including in the purchase price (unless excluded at lines xx-xx) the Assets of the Business  
21 including all goodwill, stock-in-trade, trade fixtures, Fixtures (if interest in Real Estate is included), accounts receivable, all Business Personal  
22 Property, the interest in Real Estate (if included on lines xx-xx), and the following additional property \_\_\_\_\_

23 \_\_\_\_\_  
24 [STRIKE AND COMPLETE AS APPLICABLE] (hereinafter collectively the "Assets").

25 Seller shall convey Business Personal Property and any other personal property by Bill of Sale or  
26 \_\_\_\_\_, free and clear of all liens and encumbrances except \_\_\_\_\_

27 \_\_\_\_\_

28 If stock-in-trade or accounts receivable are purchased, the purchase price shall be based on the following terms and costs:

29 (a) Stock-in-Trade \_\_\_\_\_

30 \_\_\_\_\_

31 (b) Accounts Receivable \_\_\_\_\_

32 \_\_\_\_\_

33 ■ **INTEREST IN REAL ESTATE [CHECK BOX ON LINE XX OR XX, AS APPLICABLE]:**

34  **NO INTEREST IN REAL ESTATE INCLUDED IN PURCHASE PRICE**

35  **DESCRIPTION OF INTEREST IN REAL ESTATE INCLUDED IN PURCHASE PRICE:**

36 Street address is: \_\_\_\_\_ in the \_\_\_\_\_

37 \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, Wisconsin (the "Real Estate").

38 The Real Estate is owned by: \_\_\_\_\_

39 The Real Estate is leased to: \_\_\_\_\_

40 The interest in the Real Estate included in the purchase price is:  ownership  leasehold  assignment of existing lease  other  
41 \_\_\_\_\_ . Insert any additional description, including further description of the type of

42 interest in the Real Estate that is included in purchase price, at lines xxx-xxx or attach as an addendum per line xxx. ■ **REAL PROPERTY**

43 **INCLUDED IN PURCHASE PRICE:** The following Real Property is included in the purchase price (address) \_\_\_\_\_

44 \_\_\_\_\_

45 ■ ~~ADDITIONAL PROPERTY INCLUDED IN PURCHASE PRICE:~~ Seller shall include in the purchase price and transfer, free and  
46 clear of encumbrances, all fixtures, as defined at lines 321-324, goodwill, stock-in-trade, accounts receivable and business personal  
47 property as defined at lines 247-251, unless excluded at lines 15-16, and the following additional property: \_\_\_\_\_

48 \_\_\_\_\_

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

50 \_\_\_\_\_

51 \_\_\_\_\_

52 \_\_\_\_\_

52 **CAUTION: If Real Estate is included, identify any Fixtures (see lines xxx-xxx) to be excluded by Seller or which are rented**  
53 **and will continue to be owned by the lessor.**

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

55 ~~If stock-in-trade or accounts receivable are purchased, the purchase price shall be based on the following terms and costs:~~

56 ~~(a) Stock in Trade~~

57

58 ~~(b) Accounts Receivable~~

59

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

61 of the Offer.

62 **CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term deadlines**

63 **running from acceptance provide adequate time for both binding acceptance and performance.**

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

65 before \_\_\_\_\_ . Seller may keep the Assets on the market

66 and accept secondary offers after binding acceptance of this Offer.

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

68 **OPTIONAL PROVISIONS** TERMS OF THIS OFFER THAT ARE PRECEDED BY AN OPEN BOX (  ) ARE PART OF THIS OFFER ONLY IF

69 THE BOX IS MARKED SUCH AS WITH AN "X." THEY ARE NOT PART OF THIS OFFER IF MARKED "N/A" OR ARE LEFT BLANK.

70 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Listing, delivery of documents and written

71 notices to a Party shall be effective only when accomplished by one of the methods specified at lines xx-xx.

72 (1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at

73 line xx or xx.

74 Seller's recipient for delivery (optional): \_\_\_\_\_

75 Buyer's recipient for delivery (optional): \_\_\_\_\_

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

77 Seller: ( \_\_\_\_\_ ) Buyer: ( \_\_\_\_\_ )

78 (3) Commercial Delivery: depositing the document or written notice fees prepaid or charged to an account with a commercial delivery

79 service, addressed either to the Party, or to the Party's recipient for delivery if named at line xx or xx, for delivery to the Party's

80 delivery address at line xx or xx.

81 (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

82 Party's recipient for delivery if named at line xx or xx, for delivery to the Party's delivery address at line xx or xx.

83 Delivery address for Seller: \_\_\_\_\_

84 Delivery address for Buyer: \_\_\_\_\_

85 (5) E-Mail: electronically transmitting the document or written notice to the Party's e-mail address, if given below at line xx or xx. If

86 this is a consumer transaction where the property being purchased or the sale proceeds are used primarily for personal, family or

87 household purposes, each consumer providing an e-mail address below has first consented electronically to the use of electronic

88 documents, e-mail delivery and electronic signatures in the transaction, as required by federal law.

89 E-Mail address for Seller: \_\_\_\_\_

90 E-Mail address for Buyer: \_\_\_\_\_

91 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery

92 to, or Actual Receipt by, all Buyers or Sellers.

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

94 notices to a Party shall be effective only when accomplished by one of the methods specified at lines 24 – 33.

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

96 with a commercial delivery service, addressed either to the Party or to the Party's recipient for delivery designated at lines 27 – 29 (if

97 any), for delivery to the Party's delivery address at lines 28 – 30.

98 Seller's recipient for delivery (optional): \_\_\_\_\_

99 Seller's delivery address: \_\_\_\_\_

100 Buyer's recipient for delivery (optional): \_\_\_\_\_

101 Buyer's delivery address: \_\_\_\_\_

102 (2) By giving the document or written notice personally to the Party, or the Party's recipient for delivery if an individual is designated

103 at lines 27 – 29.

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

105 Buyer: ( \_\_\_\_\_ ) Seller: ( \_\_\_\_\_ )

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

107 lines 169-172 or in an addendum per line 419. Occupancy shall be given subject to tenant's rights, if any. **MOVED**

108 **TRANSFER OF LEGAL POSSESSION** Legal possession of the Business and all included property shall be delivered to Buyer at

109 the time of closing. Business personal property included in purchase price will be transferred by bill of sale or \_\_\_\_\_

110 \_\_\_\_\_ . **NOTE: If real property is being leased see lines 134 - 144.**

111 **PLACE OF CLOSING** This transaction is to be closed at the place designated by Buyer's lender or \_\_\_\_\_

112 \_\_\_\_\_ no later than \_\_\_\_\_

113 ~~at the place selected by Seller, unless otherwise agreed by the Parties unless another date or place is agreed to~~ in writing.

114 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes,  
115 rents, prepaid insurance (if assumed), private and municipal charges, property owners association assessments, fuel and \_\_\_\_\_  
116 \_\_\_\_\_.

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

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

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

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

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

123  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  
124 known, multiplied by current mill rate (current means as of the date of closing)

125

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

129  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  
130 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  
131 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  
132 bill. Buyer and Seller agree this is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real  
133 estate brokers in this transaction.

134 ~~**CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing: real estate taxes, personal property taxes,  
135 rents, prepaid insurance (if assumed), private and municipal charges, property owner's association assessments, fuel and \_\_\_\_\_  
136 \_\_\_\_\_.~~ Any income, taxes  
137 or expenses shall accrue to Seller, and be prorated, through the day prior to closing. Net general real estate taxes and personal  
138 property taxes shall be prorated based on (the taxes for the current year, if known, otherwise on the taxes for the preceding year)  
139 (\_\_\_\_\_).

140 ~~**STRIKE AND COMPLETE AS APPLICABLE** CAUTION: If real or personal property has not been fully assessed for tax purposes or  
141 if proration on the basis of taxes for the preceding year is not acceptable, insert estimated annual tax or other basis for proration.  
142 Note: The government taxing authority normally bills Seller for personal property taxes for the entire year.~~

143 **BUSINESS AND PROPERTY CONDITION PROVISIONS**

144 ■ REPRESENTATIONS REGARDING BUSINESS, INCLUDED PROPERTY AND THE TRANSACTION: Seller represents to Buyer that  
145 as of the date of acceptance Seller has no notice or knowledge of conditions affecting the Business, included real or personal property or  
146 the transaction (as defined at lines 253 to 302) other than those identified in Seller's disclosure report dated \_\_\_\_\_ and Real  
147 Estate Condition Report, if applicable, dated \_\_\_\_\_, which was/were received by Buyer prior to Buyer signing  
148 this Offer and which is/are made a part of this offer by reference **COMPLETE DATES** OR **STRIKE AS APPLICABLE** and  
149 \_\_\_\_\_.

150 ~~[INSERT CONDITIONS NOT ALREADY INCLUDED IN THE DISCLOSURE OR CONDITION REPORT(S)].~~

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

156 ■ **BUSINESS OPERATION:** Seller shall continue to conduct the Business in a regular and normal manner and shall use Seller's best  
157 efforts to keep available the services of Seller's present employees and to preserve the goodwill of Seller's suppliers, customers and  
158 others having business relations with Seller.

159 ■ ~~PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING:~~ Seller shall maintain ~~all real and business personal property~~  
160 ~~included in this Offer~~ the Assets until the earlier of closing or occupancy by Buyer in materially the same condition as of the date of  
161 acceptance of this Offer, except for ordinary wear and tear. -If, prior to the earlier of closing or occupancy by Buyer, the included  
162 Rreal Estate or Business Personal Property is damaged in an amount of not more than five per cent (5%) of the purchase price,  
163 Seller shall be obligated to ~~restore~~ repair the damaged property and restore it to the same condition that is was in on the day of this  
164 Offer. No later than closing, Seller shall provide Buyer with lien waivers for all lienable repairs and restoration. If Seller is unable to  
165 repair and restore the damaged property, Seller shall promptly notify Buyer in writing and this Offer may be canceled at the option of  
166 the Buyer. -If the damage shall exceed such sum, Seller shall promptly notify Buyer in writing of the damage and this Offer may be  
167 canceled at the option of Buyer. -Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to any  
168 insurance proceeds relating to the damaged property, plus a credit towards the purchase price equal to the amount of Seller's  
169 deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, ~~the any~~ insurance  
170 proceeds shall be held in trust for the sole purpose of restoring the Property Assets.

171 ■ **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a part of this  
172 Offer. An "inspection" is defined as an observation of the Assets which does not include an appraisal or testing of the Assets, other

173 than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby  
174 authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Assets and  
175 the laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors, testers, appraisers and qualified third  
176 parties reasonable access to the Assets upon advance notice, if necessary to satisfy the contingencies in this Offer. Buyer and  
177 licensees may be present at all inspections and testing. Except as otherwise provided, Seller's authorization for inspections does not  
178 authorize Buyer to conduct testing of the Assets.

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

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

186 ~~INSPECTIONS: Seller agrees to allow Buyer's inspectors and testers reasonable access to the Business and included property~~  
187 ~~upon reasonable notice if the inspections or tests are reasonably necessary to satisfy the contingencies in this Offer. Buyer agrees~~  
188 ~~to promptly provide copies of all such inspection and test reports to Seller, and to listing broker if Business is listed. Furthermore,~~  
189 ~~Buyer agrees to promptly restore the Business and included property to its original condition after Buyer's inspections and tests are~~  
190 ~~completed, unless otherwise agreed with Seller. CAUTION: See lines 327-339 for definitions of inspection and test. Seller's~~  
191 ~~authorization for inspections does not authorize Buyer to conduct testing of the Business or included property. If Buyer~~  
192 ~~requires testing contingencies, they should be specifically provided for at lines 169-172 or 419. Seller acknowledges that~~  
193 ~~certain inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin~~  
194 ~~Department of Natural Resources.~~

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

199 ~~PRE-CLOSING INSPECTION: At a reasonable time, pre-approved by Seller or Seller's agent, within 3 days before closing, Buyer~~  
200 ~~shall have the right to inspect the Business and included property to determine that there has been no significant change in the~~  
201 ~~condition of the Business and included property, except for changes approved by Buyer.~~

202 ■ **PROPERTY IMPROVEMENT, DEVELOPMENT OR CHANGE OF USE:** If Buyer contemplates improving, developing or changing  
203 the use of the Business or real property sold by this Offer, Buyer may need to address municipal and zoning ordinances, recorded  
204 building and use restrictions, covenants and easements which may prohibit some improvements or uses. The need for building  
205 permits, zoning variances, environmental audits, etc. may need to be investigated to determine feasibility of improvements,  
206 development or use changes for the Business or real property sold by this Offer. Contingencies for investigation of these issues may  
207 be added to this Offer. See lines 169 -172 or 419. If plant closings or mass layoffs will occur as a result of this Offer the Parties  
208 should review federal and state plant closing laws.

209 ■ **PROPERTY DIMENSIONS AND SURVEYS:** Buyer and Seller acknowledge that any real property, building or room dimensions,  
210 or total acreage or building square footage figures, provided to Buyer or Seller, may be approximate because of rounding or other  
211 reasons, unless verified by survey or other means. Buyer and Seller also acknowledge that there are various formulas used to  
212 calculate total square footage of buildings and that total square footage figures will vary dependent upon the formula used.  
213 CAUTION: Buyer and Seller should verify total square footage formula, real property, building or room dimensions, and total acreage  
214 or square footage figures, if these figures are material.

215 ~~**DELIVERY/RECEIPT** Unless otherwise stated in this Offer, any signed document transmitted by facsimile machine (fax) shall be~~  
216 ~~treated in all manner and respects as an original document and the signature of any Party upon a document transmitted by fax shall~~  
217 ~~be considered an original signature. Personal delivery to, or actual receipt by, any named Buyer or Seller constitutes personal~~  
218 ~~delivery to, or actual receipt by Buyer or Seller. Once received, a notice cannot be withdrawn by the Party delivering the notice~~  
219 ~~without the consent of the Party receiving the notice. A Party may not unilaterally reinstate a contingency after a notice of a~~  
220 ~~contingency waiver has been received by the other Party. The delivery/receipt provisions in this Offer may be modified when~~  
221 ~~appropriate, e.g. when mail delivery is not desirable (see lines 24-30). Buyer and Seller authorize the agents of Buyer and Seller to~~  
222 ~~distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for~~  
223 ~~the transaction.~~

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

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

231 If Seller defaults, Buyer may:  
232 (1) sue for specific performance; or

233 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.  
 234 In addition, the Parties may seek any other remedies available in law or equity.  
 235 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the  
 236 discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of  
 237 the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those  
 238 disputes covered by the arbitration agreement. NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE  
 239 CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY. BROKERS MAY PROVIDE A GENERAL  
 240 EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS  
 241 CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN  
 242 ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.  
 243 **ENTIRE AGREEMENT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding  
 244 the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and inures to the  
 245 benefit of the parties to this Offer and their successors in interest. **Note: Consult appropriate advisors for tax, license or other**  
 246 **questions.**  
 247 **PROPERTY ADDRESS:** \_\_\_\_\_  
 248  **ENVIRONMENTAL EVALUATION/INSPECTION CONTINGENCY:** This Offer is contingent upon: **CHECK THOSE THAT APPLY**  
 249  A qualified independent environmental consultant of Buyer's choice conducting an environmental site assessment (see lines  
 250 303-315) of the Real Property, at (Buyer's)(Seller's) expense **STRIKE ONE**, which discloses no environmental defects as defined at  
 251 lines 316-320.  
 252  A qualified independent inspector of Buyer's choice conducting an inspection of the Real Property, and \_\_\_\_\_  
 253 \_\_\_\_\_, at (Buyer's)(Seller's) **STRIKE ONE** expense, which discloses no defects as defined at lines 330-333.  
 254 This contingency shall be deemed satisfied unless Buyer, within \_\_\_ days of acceptance, delivers to Seller a copy of the  
 255 environmental site assessment / inspection report(s) and a written notice listing the defect(s) identified in the environmental site  
 256 assessment /inspection report(s) to which Buyer objects. Defects do not include conditions the nature and extent of which Buyer had  
 257 actual knowledge or written notice before signing the Offer. Buyer agrees to deliver a copy of the report and notice to listing broker, if  
 258 Real Property is listed, promptly upon delivery to Seller.  
 259 **LEASED PROPERTY** For any Real Property included in the purchase price which is currently leased and if leases extend beyond  
 260 closing, Seller shall assign Seller's rights under the lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer  
 261 at closing. The terms of the (written) (oral) **STRIKE ONE** lease(s), if any, are \_\_\_\_\_  
 262 \_\_\_\_\_.  
 263  If the real property occupied by the Business is owned by Seller, but not sold by this Offer, Seller: **Check ONE**  
 264  agrees to lease the real property to Buyer on the following terms: \_\_\_\_\_  
 265 \_\_\_\_\_.  
 266  agrees to lease the real property according to the terms of the lease made a part of this agreement per line 419.  
 267 If the real property occupied by the Business is owned by a third party and is currently leased to Seller, then **CHECK ONE**  
 268  Seller agrees to assign its interest in the Lease to Buyer, if assignable. (See lines 134-137.)  
 269  Buyer will not accept an assignment of Seller's interest in the Lease.  
 270 **DOCUMENT REVIEW/RECEIPT CONTINGENCY** This Offer is contingent upon Buyer, at Buyer's expense, being able to obtain the  
 271 following within the number of days of acceptance specified in each item below (consider addressing licenses, permits, etc.)  
 272  \_\_\_\_\_ (\_\_\_ days).  
 273  \_\_\_\_\_ (\_\_\_ days).  
 274  \_\_\_\_\_ (\_\_\_ days).  
 275 This Offer is contingent upon Seller delivering the following documents to Buyer within the number of days of acceptance specified in  
 276 each item below:  
 277  Documents showing the sale of the Business and included real estate has been properly authorized, if Seller is a business entity (\_\_\_ days).  
 278  A complete inventory of all included business personal property which shall be consistent with all prior representations (\_\_\_  
 279 days).  
 280  Uniform Commercial Code lien search as to the business personal property included in the purchase price, showing the  
 281 business personal property to be free and clear of all liens, other than liens to be released prior to or from the proceeds of closing  
 282 (\_\_\_ days).  
 283  Copies of all leases affecting the Business or business personal property, which shall be consistent with all prior  
 284 representations (\_\_\_ days).  
 285  Estimated principal balance of accounts receivable and payable which shall be consistent with all prior representations (\_\_\_  
 286 days).  
 287  Copy of profit and loss statements, balance sheets, business books and records, and income tax returns for the following  
 288 years \_\_\_\_\_ which shall be consistent with all prior representations  
 289 (\_\_\_ days).  
 290  Copies of all current licenses held by Business which indicate that Business holds all licenses required for current operations  
 291 (\_\_\_ days).

292  Copies of franchise agreements, if any, which shall be consistent with all prior representations (\_\_\_ days).  
293  Any agreements restricting Seller from competing with Buyer after closing which shall be consistent with all prior  
294 representations (\_\_\_ days).  
295  Other \_\_\_\_\_

296 This document review/receipt contingency shall be deemed satisfied unless Buyer, within \_\_\_\_\_ days of the earlier of: 1) receipt  
297 of the final document to be obtained/delivered or 2) the latter of the deadlines for obtaining or delivery of the documents, delivers to  
298 Seller a written notice indicating that this contingency has not been satisfied. The notice shall identify which document(s) have not  
299 been timely obtained/delivered or do not meet the standard set forth for the document(s). Buyer shall keep all information reviewed  
300 confidential until closing. If this Offer does not close Buyer shall promptly return all documents received from Seller.

301 **ADDITIONAL PROVISIONS** \_\_\_\_\_  
302 \_\_\_\_\_  
303 \_\_\_\_\_  
304 \_\_\_\_\_

305 **SALES TAX** Sales tax, if any, shall be paid by Seller. Seller agrees to surrender Seller's sales permit in a timely manner. In  
306 compliance with § 77.52(18), Wis. Stats., Seller agrees to escrow the sum of \$ \_\_\_\_\_ out of  
307 the purchase price to be held by \_\_\_\_\_  
308 \_\_\_\_\_ and to be released to Seller when Seller provides the escrow agent with  
309 a receipt from the Department of Revenue that any sales tax due and owing has been paid, or a certificate that no amount is due.

310 **REAL PROPERTY TITLE** Upon payment of the purchase price, Seller shall convey the real property by warranty deed (or other  
311 conveyance as provided herein) free and clear of all liens and encumbrances, except: municipal and zoning ordinances and  
312 agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use  
313 restrictions and covenants, general taxes levied in the year of closing and \_\_\_\_\_ (provided none  
314 of the foregoing prohibit present use of the real property), which constitutes merchantable title for purposes of this transaction. Seller  
315 further agrees to complete and execute the documents necessary to record the conveyance. **WARNING: Municipal and zoning  
316 ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses  
317 and therefore should be reviewed, particularly if Buyer contemplates making improvements to Property or a use other than  
318 the current use.**

319 ■ **FORM OF TITLE EVIDENCE:** Seller shall give evidence of title to the real property in the form of an owner's policy of title  
320 insurance in the amount of the value of the real property on a current ALTA form issued by an insurer licensed to write title insurance  
321 in Wisconsin. **CAUTION: MODIFY AMOUNT OF OWNER'S POLICY OF TITLE INSURANCE IF TITLE POLICY WILL INSURE  
322 TITLE TO PROPERTY OTHER THAN REAL PROPERTY. CAUTION: IF TITLE EVIDENCE WILL BE GIVEN BY ABSTRACT,  
323 STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**

324 ■ **PROVISION OF MERCHANTABLE TITLE:** Seller shall pay all costs of providing title evidence. For purposes of closing, title  
325 evidence shall be acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than  
326 3 business days before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence  
327 to be merchantable, subject only to liens which will be paid out of the proceeds of closing and standard title insurance requirements  
328 and exceptions, as appropriate. **CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE  
329 COMMITMENT PRIOR TO CLOSING OR A "GAP ENDORSEMENT" WHICH WOULD INSURE OVER LIENS FILED BETWEEN  
330 THE EFFECTIVE DATE OF THE COMMITMENT AND THE DATE THE DEED IS RECORDED.**

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

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

344 **BULK SALES** Seller shall comply with the Bulk Transfers Law (Chapter 406, Wis. Stats.), if applicable. The delivery of a fully  
345 executed copy of this Offer to Seller shall constitute a written demand for a list of creditors and for the preparation of a schedule of  
346 the personal property transferred, as required by the Bulk Transfers Law.

347 **Rental Weatherization** Unless otherwise provided this transaction is exempt from State of Wisconsin Rental Weatherization  
348 Standards (Wisconsin Administrative Code, Comm 67). If not exempt, address which Party is responsible for compliance, including  
349 all costs (See lines 169-172 or 419). If Seller is responsible for compliance, Seller shall provide a Certificate of Compliance at  
350 closing.

351 **EARNEST MONEY**

352 ■ **HELD BY:** Unless otherwise agreed, earnest money shall be paid to and held in the trust account of the listing broker (buyer's  
353 agent if Property is not listed or seller if no broker is involved), until applied to purchase price or otherwise disbursed as provided in  
354 the Offer. CAUTION: Should persons other than a broker hold earnest money, an escrow agreement should be drafted by the  
355 Parties or an attorney. If someone other than Buyer makes payment of earnest money, consider a special disbursement agreement.  
356 ■ **DISBURSEMENT:** If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after  
357 clearance from payor's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At  
358 closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall  
359 be disbursed according to a written disbursement agreement signed by all Parties to this Offer (Note: Wis. Adm. Code § RL  
360 18.09(1)(b) provides that an offer to purchase is not a written disbursement agreement pursuant to which the broker may disburse).  
361 If said disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse  
362 the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into  
363 a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other  
364 disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader  
365 action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to  
366 disbursement.

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

#### 379 **DEFINITIONS**

380 ■ **ACCEPTANCE:** Acceptance occurs when all Buyers and Sellers have signed an identical copy of the Offer, including signatures  
381 on separate but identical copies of the Offer. CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider  
382 whether short term deadlines running from acceptance provide adequate time for both binding acceptance and performance.

383 ■ **BUSINESS PERSONAL PROPERTY:** "Business personal property" is defined as all tangible and intangible personal property and  
384 rights in personal property owned by Seller and used in the business as of the date of this Offer, including furniture, trade fixtures and  
385 equipment, tools used in business, telephone numbers and listings, if transferable, customer lists, trade names, business records,  
386 supplies, leases, advance lease deposits, customer deposits, signs, all other personal property used in Business, and if transferable,  
387 all permits, special licenses and franchises, except those assets disposed of in the ordinary course of business or as permitted by  
388 this Offer.

389 ■ **CONDITIONS AFFECTING THE BUSINESS, INCLUDED PROPERTY OR THE TRANSACTION**

390 A "condition affecting the Business, included property or the transaction" is defined as follows:

- 391 (a) Planned or commenced public improvements which may result in special assessments or otherwise materially affect the  
392 Business or included property, the present use of the Business or included property sold by this Offer;
- 393 (b) Government agency or court order requiring repair, alteration or correction of any existing condition;
- 394 (c) Material violation of the Americans with Disabilities Act (ADA) or other state or local laws requiring minimum accessibility for  
395 persons with disabilities. Note: a Building owner's or tenant's obligations under the ADA may vary dependant upon the financial or  
396 other  
397 capabilities of the building owner or tenant;
- 398 (d) Completed or pending reassessment of the real property or business personal property sold by this Offer for tax purposes;
- 399 (e) Structural inadequacies which if not repaired will significantly shorten the expected normal life of the real property sold by this  
400 Offer;
- 401 (f) Any land division involving the real property sold by this Offer, for which required state or local approvals were not obtained;
- 402 (g) Construction or remodeling on the real property sold by this Offer for which required state or local approvals were not obtained;
- 403 (h) Any portion of the real property sold by this Offer being in a 100 year floodplain, a wetland or shoreland zoning area under local,  
404 state or federal regulations;
- 405 (i) That a structure which the Business occupies or which is located on the real property sold by this Offer is designated as a  
406 historic building or that any part of a structure which the Business occupies or the real property sold by this Offer is in a historic  
407 district;
- 408 (j) Material violations of environmental laws or other laws or agreements regulating the use of the Business or real property sold by  
409 this Offer;
- 410 (k) Conditions constituting a significant health or safety hazard for occupants of the Business or real property sold by this Offer;

411 (l) Material levels of hazardous substances located on the premises which the Business occupies or on the real property sold by  
412 this Offer or previous storage of material amounts of hazardous substances on the premises which the Business occupies or on the  
413 real property sold by this Offer;

414 (m) Material levels of medical or infectious waste located on the premises which the Business occupies or on the real property sold  
415 by this Offer or previous storage of material amounts of medical or infectious waste on the premises which the Business occupies or  
416 on the real property sold by this Offer;

417 (n) Underground storage tanks for storage of flammable or combustible liquids including but not limited to gasoline and heating oil  
418 on the premises which the Business occupies or on the real property sold by this Offer; NOTE: The Wisconsin Administrative Code  
419 contains registration and operation rules for such underground storage tanks.

420 (o) Underground or aboveground storage tanks for storage of flammable, combustible or hazardous materials including but not  
421 limited to gasoline and heating oil, which are currently or which were previously located on the premises which the Business  
422 occupies or on the real property sold by this Offer;

423 (p) High voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the real  
424 property sold by this Offer;

425 (q) Any material defects in any of the equipment, appliances, business fixtures, fixtures, tools, furniture or other business personal  
426 property included in the transaction, and Seller further warrants that all will be in good working order on the day of closing;

427 (r) Any encumbrances on the Business, all integral parts thereof, or the included property being conveyed in conjunction with the  
428 Business, except as stated in this Offer and in any schedule attached to it;

429 (s) Any litigation, government proceeding or investigation in progress, threatened or in prospect against or related to the Business  
430 or the included property sold by this Offer;

431 (t) Any road change, road work or change in road access which would materially affect the present use or access to the Business  
432 or the real property included in this Listing.

433 (u) Any right granted to underlying lien holder(s) to accelerate the debtor's obligation by reason of the transfer of ownership of  
434 Business or other property included in the transaction, or any permission to transfer being required and not obtained;

435 (v) Any unpaid Business taxes such as: income; sales; payroll; Social Security; unemployment; or any other employer/employee  
436 taxes due and payable or accrued;

437 (w) A material failure of the financial statements, or schedules to the financial statements, to present the true and correct condition  
438 of the Business as of the date of the statements and schedules or a material change in the financial condition or operations of the  
439 Business since the date of the last financial statements and schedules provided by Seller, except for changes in the ordinary course  
440 of business which are not in the aggregate materially adverse;

441 (x) Other conditions or occurrences which would significantly reduce the value of the Business or included property to a  
442 reasonable person with knowledge of the nature and scope of the condition or occurrence.

443 ■ **ENVIRONMENTAL SITE ASSESSMENT:** An "environmental site assessment" ("Phase I Site Assessment" or equivalent)(see lines  
444 125-133 ) may include, but is not limited to: (1) an inspection of the real property; (2) a review of the ownership and use history of the  
445 real property, including a search of title records showing private ownership of the real property for a period of 80 years prior to the  
446 visual inspection; (3) a review of historic and recent aerial photographs of the real property, if available; (4) a review of environmental  
447 licenses, permits or orders issued with respect to the real property; (5) an evaluation of results of any environmental sampling and  
448 analysis that has been conducted on the real property; and (6) a review to determine if the real property is listed in any of the written  
449 compilations of sites or facilities considered to pose a threat to human health or the environment including the National Priorities List,  
450 the Department of Natural Resources' (DNR) registry of Abandoned Landfills, the DNR's Registry of Leaking Underground Storage  
451 Tanks, the DNR's most recent remedial response site evaluation report (including the Inventory of Sites and Facilities Which May  
452 Cause or Threaten to Cause Environmental Pollution). Any "environmental site assessment" performed under this Offer shall comply  
453 with generally recognized industry standards (e.g. current American Society of Testing and Materials "Standards for Environmental  
454 Site Assessments for Commercial Real Estate"), and state and federal guidelines, as applicable. **CAUTION: Unless otherwise**  
455 **agreed an "environmental site assessment" does not include subsurface testing of the soil or groundwater or other testing**  
456 **of the Property for environmental pollution.**

457 ■ **ENVIRONMENTAL DEFECT:**

458 An "environmental defect" is defined as a material violation of environmental laws, a material contingent liability affecting the Real  
459 Property arising under any environmental laws, the presence of an underground storage tank(s) or material levels of hazardous  
460 substances either on the Real Property, or presenting a significant risk of contaminating the Real Property, due to future migration  
461 from other properties.

462 ■ **FIXTURES:** A "Fixture" is an item of property, which is on the real property on the date of this Offer, which is physically attached  
463 to or so closely associated with land and improvements so as to be treated as part of the real estate, including, without limitation,  
464 physically attached items not easily removable without damage to the real property, items specifically adapted to the real property,  
465 and items customarily treated as fixtures. A "fixture" does not include trade fixtures owned by tenants of the real property. See Lines  
466 11-21.

467 ■ **INCLUDED PROPERTY:** "Included property" is defined as all business personal property (as defined at lines 247-251), real  
468 property and other property of any kind or an interest in any property of any kind which has been included in the purchase price (See  
469 lines 11-21).

470 ■ **INSPECTION:** An “inspection” is defined as an observation of the included property which does not include testing of the included  
471 property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are  
472 hereby authorized.

473 ■ **INSPECTION DEFECT:** An “inspection defect” is defined as a structural, mechanical or other condition that would have a  
474 significant adverse effect on the value of the Real Property; that would significantly impair the health and safety of future occupants of  
475 the Real Property; or that if not repaired, removed or replaced would significantly shorten or have a significantly adverse effect on the  
476 expected normal life of the Real Property.

477 ■ **TEST:** A “test” is defined as the taking of samples of materials such as soils, water or building materials from the included  
478 property and the laboratory or other analysis of these materials. Note: Any contingency authorizing such tests should specify the  
479 areas of the included property sold or leased pursuant to this Offer to be tested, the purpose of the test, (e.g. to determine the  
480 presence or absence of environmental contamination), any limitations on Buyer’s testing and any other material terms of the  
481 contingency (e.g. Buyer’s obligation to return the included property to it’s original condition). Seller acknowledges that certain  
482 inspections or tests may detect environmental pollution which may be required to be reported to the Wisconsin Department of Natural  
483 Resources.

484 **TIME IS OF THE ESSENCE** TIME IS OF THE ESSENCE as to all dates and deadlines in this Offer, including but not limited to:  
485 earnest money payment(s); binding acceptance; date of closing and contingency deadlines unless it is agreed that time is not of the  
486 essence for a specific date(s) or deadline(s) at lines 169-172, or in an addendum per line 419. If “Time is of the Essence” applies  
487 to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If “Time is of the Essence” does not  
488 apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

489 **DATES AND DEADLINES** Deadlines expressed as a number of “days” from an event, such as acceptance, are calculated by  
490 excluding the day the event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day.  
491 Deadlines expressed as a specific number of “business days” exclude Saturdays, Sundays, any legal public holiday under Wisconsin  
492 or Federal law, and other day designated by the President such that the postal service does not receive registered mail or make  
493 regular deliveries on that day. Deadlines expressed as a specific number of “hours” from the occurrence of an event, such as receipt  
494 of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a  
495 specific day of the calendar year or as the day of a specific event, such as closing, expire at midnight of that day.

496 **ADDITIONAL FINANCING PROVISIONS**

497 ■ **LAND CONTRACT:** If this Offer provides for a land contract both Parties agree to execute a State Bar of Wisconsin Form 11  
498 Land Contract, the terms of which are incorporated into this Offer by reference. Prior to execution of the land contract Seller shall  
499 provide the same evidence of merchantable title as required above and written proof, at or before execution, that the total underlying  
500 indebtedness, if any, is not in excess of the proposed balance of the land contract, that the payments on the land contract are  
501 sufficient to meet all of the obligations of Seller on the underlying indebtedness, and that all creditors whose consent is required have  
502 consented to the land contract sale. Seller may terminate this Offer if creditor approval cannot be obtained. Seller may terminate  
503 this Offer if Buyer does not provide a written credit report which indicates that Buyer is credit worthy based upon reasonable  
504 underwriting standards within 15 days of acceptance. Buyer shall pay all costs of obtaining creditor approval and the credit report.  
505 Seller shall be responsible for preparation and the expense of preparation of all closing documentation, including the land contract.

506 ■ **LOAN COMMITMENT:** Buyer agrees to pay all customary financing costs (including closing fees), to apply for financing promptly,  
507 and to provide evidence of application promptly upon request by Seller. If Buyer qualifies for the financing described in this Offer or  
508 other financing acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the  
509 deadline for loan commitment at line 400. **Buyer’s delivery of a copy of any written loan commitment (even if subject to  
510 conditions) shall satisfy the Buyer’s financing contingency unless accompanied by a notice of unacceptability. CAUTION:  
511 BUYER, BUYER’S LENDER AND AGENTS OF BUYER OR SELLER SHOULD NOT DELIVER A LOAN COMMITMENT TO  
512 SELLER WITHOUT BUYER’S PRIOR APPROVAL OR UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.**

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

520 **SELLER TERMINATION RIGHTS:** If Buyer does not make timely delivery of said commitment, Seller may terminate this Offer if  
521 Seller delivers a written notice of termination to Buyer prior to Seller’s actual receipt of a copy of Buyer’s written loan commitment.

522 **SELLER FINANCING:** If this Offer provides for Seller financing, personal property transferred hereunder shall be subject to a chattel  
523 security agreement and lien rights under the Uniform Commercial Code in favor of Seller.

524 **NOTE: IF PURCHASE IS CONDITIONED ON BUYER OBTAINING FINANCING FOR OPERATIONS OR DEVELOPMENT**

525 **CONSIDER ADDING A CONTINGENCY FOR THAT PURPOSE.**

526 **PROPERTY ADDRESS:** \_\_\_\_\_

527 **ALLOCATION OF PURCHASE PRICE** CHECK LINE 384 OR 392

528 The Parties agree to the following allocation of the purchase price:

529 Goodwill:..... \$ \_\_\_\_\_  
 530 Stock-in-trade: ..... \$ \_\_\_\_\_  
 531 Accounts receivable:..... \$ \_\_\_\_\_  
 532 Business personal property:..... \$ \_\_\_\_\_  
 533 Real property: ..... \$ \_\_\_\_\_  
 534 Other: ..... \$ \_\_\_\_\_  
 535 Total \$ \_\_\_\_\_

536 The Parties shall agree on an allocation by the following deadline: (within \_\_\_\_ days of acceptance of the Offer)(\_\_\_\_\_  
 537 , \_\_\_\_\_) **STRIKE AND COMPLETE AS APPLICABLE**. If the Parties cannot agree to an allocation by the deadline, the Parties  
 538 shall submit to binding arbitration. The Parties will share any costs of arbitration equally. Allocation may take place after closing.

539 **CAUTION: Fair market value of the real property must be determined prior to closing to complete the transfer return per  
 540 Wis. Stats. § 77.22. The Parties should consult accountants, legal counsel or other appropriate experts, as necessary.**

541  **FINANCING CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain: **CHECK APPLICABLE FINANCING**  
 542 **BELOW**

543  land contract financing from Seller at closing as further described at lines 353-361 and 401-418.

544  a \_\_\_\_\_ **INSERT LOAN PROGRAM** (fixed) (adjustable) **STRIKE ONE**  
 545 rate first mortgage loan commitment as further described at lines 362-381 and 401-414, within \_\_\_\_ days of acceptance of this Offer.

546 The financing selected shall be in an amount of not less than \$\_\_\_\_\_ for a term of not less than \_\_\_\_\_  
 547 years, amortized over not less than \_\_\_\_\_ years. If the purchase price under this Offer is modified, the financed amount,  
 548 unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly  
 549 payments shall be adjusted as necessary to maintain the term and amortization stated above.

550 **IF FINANCING IS FIXED RATE** the annual rate of interest shall not exceed \_\_\_\_\_ % and monthly  
 551 payments of principal and interest shall not exceed \$\_\_\_\_\_.

552 **IF FINANCING IS ADJUSTABLE RATE** the initial annual interest rate shall not exceed \_\_\_\_\_ %. The initial interest rate  
 553 shall be fixed for \_\_\_\_\_ months, at which time the interest rate may be increased not more than \_\_\_\_\_ % per year. The  
 554 maximum interest rate during the mortgage term shall not exceed \_\_\_\_\_ %. Initial monthly payments of principal and  
 555 interest shall not exceed \$\_\_\_\_\_. Monthly payments of principal and interest may be  
 556 adjusted to reflect interest changes. Monthly payments may also include: \_\_\_\_\_. The  
 557 mortgage may not include a prepayment premium. Buyer agrees to pay discount points and/or loan origination fee in an amount not  
 558 to exceed \_\_\_\_\_ % of the loan.

559 **OTHER FINANCING TERMS:** \_\_\_\_\_  
 560 \_\_\_\_\_

561 IF FINANCING IS BY LAND CONTRACT \$\_\_\_\_\_ shall be paid at closing (in addition to earnest money). The  
 562 interest rate following payment default shall be \_\_\_\_\_ % , the default period shall be \_\_\_\_ days for payments and \_\_\_\_ days for  
 563 performance of any other obligations. Interest shall be calculated on a prepaid basis. Any amount may be prepaid on principal  
 564 without penalty at any time. Buyer understands that if the term of the land contract is shorter than the amortization period a balloon  
 565 payment will be due at the end of the term.

566 **ADDENDA** The attached \_\_\_\_\_ is/are made part of this Offer.  
 567 This Offer was drafted on \_\_\_\_\_ [date] by [Licensee and firm] \_\_\_\_\_.

568 **BROKER DRAFTING THIS OFFER ON \_\_\_\_\_ [DATE] IS AGENT OF (SELLER)(BUYER)(DUAL AGENT) **STRIKE ONE****

569 (x) \_\_\_\_\_  
 570 Buyer's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

571 (x) \_\_\_\_\_  
 572 Buyer's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

573 **EARNEST MONEY RECEIPT** Broker acknowledges receipt of earnest money as per line 9 of the above Offer. **(See lines 217-242)**

574 \_\_\_\_\_ Broker (By) \_\_\_\_\_

575 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE  
 576 CLOSING AND THE CONVEYANCE OF THE BUSINESS AND INCLUDED PROPERTY IN THIS OFFER. THE UNDERSIGNED  
 577 HEREBY AGREES TO CONVEY THE ABOVE-MENTIONED BUSINESS AND INCLUDED PROPERTY IN THIS OFFER ON THE  
 578 TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.**

579 (x) \_\_\_\_\_  
 580 Seller's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

581 (x) \_\_\_\_\_  
 582 Seller's Signature ▲ Print Name here: ► Social Security No. or FEIN (Optional) ▲ Date ▲

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

584 THIS OFFER IS REJECTED \_\_\_\_\_ THIS OFFER IS COUNTERED [See attached counter] \_\_\_\_\_

585 Seller Initials ▲ Date ▲

Seller Initials ▲ Date ▲

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